United States Court of Appeals

for the Second Circuit

APPENDIX

77-7146

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-7146

B

DAVID GOLDBERG, suing derivatively in right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.,

Plaintiff-Appellant,

—against—

YAACOV MERIDOR, MILA BRENER, DAVID MERIDOR, S. ERELL, GIDEON BEN AARON, ARA A. CAMBERE, H. STRUVE HENSEL, HAIM RAFAELI, MARTIN SIEM, JACOB SUTTON, HENRY A. SINGER, MARITIMECOR, S.A., MARITIME FRUIT CARRIERS COMPANY, LTD., HORNBLOWER & WEEKS, HEMPHILL NOYES, INC., LAVENTHOL & HORWATH a/k/a LAVENTHOL KREKSTEIN, HORWATH & HORWATH, DR. JACOBO DAMM, DR. MAX LEBEDKIN, ELIE HOUSMAN, H. L. FEDERMAN, WILLIAM J. FRIEDMAN, MERRIL M. HALPERN, PER HYSING-DAHL, ANDRE MONTELL, FRITZ KONIG, ZEV LEVIN, RAYMOND CALIEZI,

Defendants-Appellees,

—and—

UNIVERSAL GAS & OIL COMPANY, INC.,

Nominal Defendant.

UNITED STATES COURT OF APPEALS
FILED
APR 29 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPEAL FROM JUDGMENT OF UNITED STATES DISTRICT COURT DISMISSING PLAINTIFF'S AMENDED COMPLAINT

APPENDIX

TURCHIN & TOPPER
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PLAINTIFFS	DEFENDANTS
GOLDBERG, DAVID suing derivatively in right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.	YAACOV MERIDOR, MILA BRENER, DAVID MERIDOR, S. ERELL, GIDEON BEN AARON, ARA A. CAMBERE, H. STRUVE HENSEL, HAIM RAFAELI MARTIN SIEM, JACOB SUTTON HENRY A. SINGER, MARITIMECOR, S.A., MARITIME FRUIT CARRIERS COMPANY, LTD., HORNBLOWER & WEEKS, HEMPHILL NOYES, INC., LAVENTHOL & HORWATH a/k/a LAVENTHOL KREKSTEIN, HORWATH & HORWATH, DR. JACOBO DAMM, DR. MAX LEBEDKIN, ELIE HOUSMAN, H. L. FEDERMAN, WILLIAM J. FRIEDMAN, MERRIL M. HALPERN, PER HYSING-DAHL, ANDRE MONTELL, FRITZ KONIG, ZEV LEVIN, RAYMOND CALIEZI, Defendants, - and - UNIVERSAL GAS & OIL COMPANY, INC., Nominal Defenant.
Amended 8-27-76	
Violation of Securities Exchange Act	

ATTORNEYS	
Turchin & Topper 60 East 42nd St., N.Y.C.10017 MO 1-0420	**Singer, Hutner, Levine & Seeman** **110 East 59th St., N.Y.C. 10022** **421-9600 (Henry A. Singer)** Willkie Farr & Gallagher 1 Chase Manhattan Plaza, N.Y.C.1000 248-1000 (Yaacov Meridor & Mila Brener)

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	DATE	FILING FEES PAID RECEIPT NUMBER	C.D. NUMBER	STATISTICAL CA CARD DATE MA
	FEB 3 1976	65194		JS-5 JS-6

DC-111

DATE	NR.	PROCEEDINGS
02-03-76	1	Filed complaint & issued summons.
02-06-76	2	Filed certificate of mailing of summons & complaint by registered mail, return receipt requested, addressed to: Jacob Sutton 58 Talstrasse Zurich, Switzerland receipt #455548 rec'd 2-19-76
02-17-76	----	Reassigned to Judge Lasker (mailed notice)
02-26-76	3	Filed Stip & Order extending Deft's. (Martin Siem) time to answer to 3-16-76. .....Lasker,J.
03-02-76	4	Filed notice of appearance of Singer Hutner Levins & Seeman as attorney for Deft. (Henry A. Singer).
03-08-76	5	Filed Stip & Order extending Defts'. time to answer to 3-30-76.....Lasker,J.
03-15-76	6	Filed Deft's. (Martin Siem) notice of taking deposition of H. Struve Hensel, on 3-16-76.
03-15-76	7	Filed Deft's. (Martin Siem) notice of taking deposition of Henry A. Singer, On 3-18-76.
03-15-76	8	Filed Deft's. (Martin Siem) notice of taking deposition of David Maridor, on 3-23-76.
03-23-76	9	Filed Deft's. (Henry Singer) affidavit & notice of motion for a protective order, ret. 3-31-76.
03-23-76	10	Filed Deft's. (Henry Singer) memorandum of law in support of motion for a protective order.
03-24-76	11	Filed Deft's. (Ara Cambere) notice of motion for a protective order, ret. 3-31-76.
03-24-76	12	Filed Deft's. (Ara Cambere) affidavit in support of motion for a protective order.
03-24-76	----	Filed Memo End on Deft's. (Henry Singer) motion for a protective order. Referred to Mag. Bernikow of this court for review & recommendation.....Lasker,J. (mailed notice)
03-24-76	13	Filed Deft's. (Martin Siem) notice of taking deposition of Ara A. Cambere on 3-22-76.
03-25-76	14	Filed Deft's. (Martin Siem) notice of motion to compel discovery and for an enlargement of time in which to answer the complaint, ret. 3-31-76.
03-25-76	15	Filed Deft's. (Martin Siem) memorandum in opposition to Deft's. (Henry Singer) motion for a protective order and in support of motion to compel discovery and enlargement of time.
03-29-76	16	Filed Stip & Order extending Deft's. (Martin Siem) time to answer to 4-13-76. .....Lasker,J.
03-30-76	----	Filed Memo End on Deft's. (Ara Cambere) motion for a protective order. Referred to Mag. Bernikow for review and recommendation.....Lasker,J. (mailed notice)
04-01-76	17	Filed Stip & Order extending Deft's. (Henry A. Singer) time to answer the complaint to 4-13-76.....Lasker,J.
04-01-76	18	Filed Stip & Order extending Deft's. (Ara Cambere) time to answer the complaint to 4-13-76.....Lasker,J.
04-12-76	19	Filed Stip & Order extending Deft's. (Ara Cambere) time to answer the complaint to 4-30-76.....Lasker,J.
04-14-76	20	Filed Stip & Order extending Deft's. (Universal Gas & Oil Co.) time to answer the complaint to 4-13-76.....Lasker,J.
04-15-76	21	Filed Stip & Order extending Deft's. (Henry A. Singer) time to answer the complaint to 4-30-76.....Lasker,J.
04-15-76	22	Filed Amended Stip of Agreement & Order extending Defts'. (all except Martin Siem) time to answer nunc pro tunc to 3-30-76.....Lasker,J.
04-16-76	23	Filed Stip & Order extending Deft's. (H.Struve Hensel) time to answer to 4-30-76.....Lasker,J.
04-16-76	24	Filed Stip & Order extending Deft's. (Universal Gas & Oil) time to answer to 4-30-76.....Lasker,J.
05-03-76	25	Filed Notice of Appearnace that deft. H. Struve Hensel has filed an appearance and that Coudert Bros. of 200 [illegible]ar, Avenue, N.Y. . N.Y. has been retained as attys for

DATE	PROCEEDIN[illegible]	Dat Judgr
04-23-76	26 Filed certificate of mailing of summons & compalint by registered mail, receipt #490015, return receipt reguested, addressed to Universal Gas & Oil Company, Inc. Received Receipt 5-12-76 c/o Icaza, Gonzalez-Ruiz & Aleman Colle Aquiline de la Guardia No. 8 Panama, [illegible] P	
05-06-76	27 Filed Stip & Order extending Defts'. (Yaacov Meridor & Mila Brener) time to answer to 5-28-76.....Lasker,J.	
04-27-76	28 Filed summons & marshal's return. Served: H. Struve Hensel by certified mail Receipt #318014 on 3-13-76 Martin Siem on 2-5-76 Ara A. Cambere on 2-17-76 Henry A. Singer on 2-9-76 Maritimecor, S.A. on 2-6-76 Maritime Fruit Carriers Company, Ltd. on 2-6-76 Also served the following by U.S. Marshal forwarding summons & complaint to The Director of Courts, Directorate of Courts, Russian Compound, Jerusalem, Israel for service on the following: Yaacov Meridoron 3-3-76 Mila Brenner on 3-3-76 Haim Rafaeli on 3-3-76 Shlomo Erel on 3-3-76 David Meridor on 2-21-76 Also served Gideon Ben Aaron on 2-25-76 by The Senior Master of the Supreme Court of Judicature, London, England.	
04-21-76	---- PRE-TRIAL CONFERENCE HELD BY Mag. Bernikow.	
05-13-76	29 Filed Stip & Order extending Deft's. (H. Struve Hensel) time to answer to 5-28-76.....Lasker,J.	
05-19-76	30 Filed Order that Mag. Leonard Bernikow will hereinafter supervise all discovery in this action and that the depositions of Henry A. Singer, et al. will commence on 6-1-76, etc.....Maz. Bernikow, (mailed notice)	
05-19-76	---- Filed Memo End on Doc.#9 - Motion disposed of per order of Mag. Bernikow, dated 5-13-76.....Lasker,J. (mailed notice)	
05-19-76	---- Filed Memo End on Doc.#14 - Motion disposed of per order of Mag. Bernikow, dated 5-13-76.....Lasker,J. (mailed notice)	
05-19-76	---- Filed Memo End on Doc.#11 - Motion disposed of per order of Mag. Bernikow, dated 5-13-76.....Lasker,J. (mailed notice)	
06-02-76	31 Filed Deft's. (Universal Gas) affidavit & notice of motion for a stay of proceedings pending Pltff's. posting of security for expenses and costs	
06-02-76	32 Filed Deft's. (Universal Gas) memorandum of law in support of motion for a stay.	
06-03-76	33 Filed Deft's. (Martin Siem) memorandum in opposition to Deft's. (Universal Gas) order to show cause.	
06-02-76	34 Filed Defts'. (Yaacov Meridor & Mila Brener) notice of special appearance and demand.	
06-03-76	35 Filed Deft's. (Universal Gas) affidavit & Order to Show Cause for a stay of discovery, ret. 5-28-76 at 4:30 p.m.....Lasker,J.	
06-03-76	---- Filed Memo End on Doc.#35 - Motion granted except that Mr. Siem is free to conduct discovery, etc.....Lasker,J. (mailed notice)	
06-03-76	36 Filed Stip & Order re: depositions of Henry Singer, et al on dates indicated, ...Lasker,J.	
06-10-76	37 Filed Deft's. (Martin Siem) memorandum in partial opposition to Universal's motion to stay.	
06-10-76	38 Filed Pltff's. affidavit & notice of cross-motion to permit inspection & copying and to set a time for filing of Defts'. answers, ret. 6-14-76.	
06-10-76	39 Filed Pltff's. memorandum of law in opposition to motion for security and in support of cross-motion.	

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DATE	PROCEEDINGS	Date Order Judgment N
06-14-76	40 Filed Defts'. (Meridor & Brener) affidavit in support of Deft's. (Universal) motion for security & a stay.	
06-14-76	41 Filed Deft's. (Hensel) affidavit in support of Deft's. (Universal) motion for a stay.	
06-14-76	42 Filed Deft's.(Cambare) affidavit in support of Deft's. (Universal) motion for a stay.	
06-14-76	43 Filed Defts'. (David Meridor, et al.) answering affidavit in support of Deft's. (Universal) motion for a stay and in opposition to Pltff's. cross-motion.	
06-16-76	44 Filed Deft's. (Universal) reply affidavit in support of motion for a stay and in response to Pltff's. cross-motion.	
06-16-76	45 Filed Deft's. (Universal) reply memorandum in support of motion for s tay and in response to Pltff's. cross-motion.	
06-16-76	46 Filed Pltff's. reply affidavit.	
06-21-76	47 Filed Deft's. (Henry A. Singer) affidavit in support of Deft's. (Universal) motion for security & a stay.	
07-13-76	---- Filed Memo End on Doc. #31 - Motion disposed of as indicated in ruling of Court in conference on 7-12-76.....Lasker,J.	
07-13-76	---- Filed Memo End on Doc. #38 - Motion disposed of as indicated in ruling of court in conference on 7-12-76.....Lasker,J.	
07-16-76	48 Filed transcript of record of proceedings dated 7-12-76.	
07-30-76	49 Filed Order that upon receipt of a list of "niversal's shareholders the Pltff. shall furnish proof for exemption from the requirements of posting security, etc.....Lasker,J. (mailed notice)	
08-27-76	50 Filed amended complaint with jury demand & issued summons.	
09-13-76	51 Filed supplemental summons & marshal's return. Served: Laventhol & Horwath on 9-2-76 H.L. Federman on 9-1-76 Hornblower & Weeks, Hemphill Noyes, Inc. on 9-2-76	
09-20-76	52 Filed Stip & Order extending Deft's. (H.L. Federman) time to answer the amended complaint to 10-20-76.....Lasker,J.	
09-20-76	53 Filed Order amending the Order dated 7-29-76 as indicated.....Lasker,J. (mailed notice)	
10-1-76	54 Filed affidavit & motion to dismiss amended comlaint ret. 10-19-76.	
10-1-76	55 FiledDefts memo of law in support of motion to dismiss.	
10-1-76	56 Filed affidavit and motion for order requiring pltff to post security.	
10-1-76	57 Filed stip. & order adjourning time to asnwer compalint to 10-13-76.	
10-12-76	58 Filed memo of law in support of defts Camber's Motion to dismiss.	
10-12-76	59 Filed defts' affidavit in support of motion to dismiss.	
10-12-76	60 Filed pltffs memo of law in opposition to motions to dismss.	
10-12-76	61 Filed pltffs afficait in opposition to motions to dismiss.	
10-19-76	62 Filed Dfts. MFC Maritimecor,David Meridor,Erell,Ben Aaron,Rafaeli, & Sutton Reply Memorandum of Law.	
10-19-76	Filed Supplemental Affdvt. on behalf of pltff. Goldberg.	
10-19-76	Filed Supplemental Memorandum of law on behalf of pltff. Goldberg.	
10-20-76	Filed affidavit and notice of motion for dismissal ret 10-19-76 at 10:00 AM.	
10-20-76	Filed defts affidavit in support of motion for dismissal.	
10-21-76	Filed stip & order extendding time to answer. Lasker J.	
10-22-76	Filed stip & order extending time to answer.	
10-28-76	Filed reply memo of law on behalf of defts Cambare.	
10- 26-76	Filed affdavits of Messrs Erell, Ben Aaronn,Rafaeli and Sutton,in support of motion to dismiss.	
11-5-76	Filed stip & order extending time to answer to 11-11-76.	
11-18-76	Filed stip and oreer extneding time to answerto 11-29-76 Lasker J.	
12-28-76	Filed notice of motion and affidavit for order vacating stay ret. 1-6-77 at 10AM.	

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	76 CIV 557 MEL DOCKET NO
David Goldberg etc.	Yaacov Meridor etc	PAGE ___ OF ___ PAGE

DATE	NR.	PROCEEDINGS
1-5-77		Filed defts Cambere's memo of law in oppostion to motion to compel discovery.
1-5-77		FiledAffidavit of L.Senn in opposition to motion to vacate order.
1-5-77		Filed affidavit in opposition to motion of deft Siem to vacate order of Court
1-5-77		Filed affidavit in opposition to motion for order vacating Stay .
1-6-77		Filed affidavit in oppostion to motion to vacate Stay.
1-11-77		Filed deft Siem 's reply to oppostion to motion for order permitting discover
2-14-77		Filed memo end. on motion dated 12-28-76... Motion denied as moot in light of of order of dismissal of complaint filed this dated. So ordered Lasker J. m/n
2-14-77		Filed memo end. on motion dated 10-20-76 . . Motion granted. See memorandum and order filed this date. So ordered Lasker J. m/n
2-14-77		Filed memo end. on motion dated 10-1-76.... Motion denied as moot. in light of order dismissing complaint filed this date. So ordered Lasker m/n
2-14-77		Filed memo # 45597.... Many of the defts move to dismiss for failure to state a claim... Goldberg has indicated a desire to replead etc. in the evert taht the motion to dismiss is granted.... we decline to permit it... For the forgoin reasons, the motion to dismiss is granted. So ordered Lasker J. m/n
3-4-77		Filed judgment.... ordered that said motion to dismiss is granted; action dismissed against all defts with prejudice and without leave to amend the complaint; that all defts recover from pltff their costs. Lasker J. Judgment ent. 3-4-77. (on docket 3-4-77) m/n
3-24-77		Fld. Pltff's Notice of Appeal to the 2nd Circuit U.S.C.A., from the judgement dismissing the amended complaint. Ent. on 3-4-77. Mailed all copies
3-31-77		Fild corrected memo # 45597 Lasker J.
4-14-77		Fild notice of transmission of record to USCA.

DC-111A REV. (1/75)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID GOLDBERG suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC., Plaintiff,	VERIFIED COMPLAINT
- against -	DERIVATIVE STOCKHOLDERS' ACTION
YAACOV MERIDOR, MILA BRENER, DAVID MERIDOR, S. ERELL, GIDEON BEN AARON, ARA A. CAMBERE, H. STRUVE HENSEL, HAIM RAFAELI, MARTIN SIEM, JACOB SUTTON, HENRY A. SINGER, MARITIMECOR, S.A., MARITIME FRUIT CARRIERS COMPANY LTD., Defendants,	
- and -	
UNIVERSAL GAS & OIL COMPANY, INC., Nominal Defendant.	

Plaintiff, stockholder of Universal Gas & Oil Company, Inc., suing derivatively in the right and for the benefit of said corporation, complaining of the defendants herein by Turchin & Topper, his attorneys, respectfully shows to this Court and alleges:

FEDERAL JURISDICTION AND VENUE

1. Federal jurisdiction is based upon §27 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") 15 USC §78 aa, and the provisions of 28 USC §1337, and to the extent that legal theories of relief based upon state law may be found applicable, upon the pendent jurisdiction of this Court. This is not a collusive action to confer jurisdiction on a court of the United States which it would not otherwise have.

2. Venue of this action is properly laid in the Southern District of New York because upon information and belief each of the defendants, including the nominal defendant, has an agent or transacts business within said District, and the transactions complained of occurred in this District and had an impact on stockholders in this District.

PARTIES TO THE ACTION

3. Plaintiff, David Goldberg, resides in Miami Beach, Florida, and since approximately May 4, 1972 has continuously been and is now the record and beneficial owner of five (5) units of the May 1972 public offering and each unit consists of 33 shares of stock

of Universal Gas & Oil Company, Ltd. (Universal") and one $1,000 8% convertible subordinated debenture due 1987.

4. Plaintiff was a shareholder of Universal at the time of the transactions of which he complains and has been such shareholder at all times since then. He will fairly and adequately represent the interests of the shareholders of Universal similarly situated in enforcing the rights of Universal.

5. Nominal defendant, Universal, is a corporation with a principal place of business at 122 East 42nd Street, New York, New York 10017. It was organized and incorporated in Panama in 1970 under the name Universal Gas Ltd., Inc. and in 1971 its name was changed to Universal Gas & Oil Company, Inc. At all times relevant hereto, Universal has been and is now a "reporting" company subject to the provisions of §15(d) of the Exchange Act, and its stock is traded in the over-the-counter market in the United States.

6. All individual defendants, upon information, have at all relevant times been and are now directors and in some cases officers of Universal as detailed in the following table:

Defendant	Office
YAACOV MERIDOR	Co-Chairman of the Board
MILA BRENER	Co-Chairman of the Board
DAVID MERIDOR	Vice President-Treasurer
S. ERELL	Vice President
HENRY A. SINGER	Secretary

7. Defendant Maritimecor, S.A. ("Maritimecor") is a corporation organized and incorporated under the laws of Panama and upon information and belief 96% of its common stock is owned and/or controlled by defendant Maritime Fruit Carriers Company Ltd. which is a corporation organized and incorporated under the laws of Israel with a principal office at 122 East 42nd Street, New York, New York 10017. Upon information and belief, prior to the events complained of herein, Maritimecor owned 78% of the outstanding shares of nominal defendant Universal.

FACTS CONSTITUTING THE CLAIM FOR RELIEF

8. The wrongful transactions hereinafter set forth were the result of a conspiracy amoung the defendants for the purpose of enriching defendants Maritimecor and Maritime Fruit and damaging Universal. The scheme, upon information and belief, was to cause Universal to raise funds from the public by a public offering and then by various transactions hereafter set forth, shift the proceeds of the offering to defendants Maritimecor and Maritime Fruit.

9. On or about May 4, 1972 defendants caused Universal to issue, through the use of the mails and instrumentalities of interstate commerce, a prospectus offering for sale of 11,000 units consisting of 363,000 shares of common stock and $11,000,000 worth of 8% convertible subordinated debentures due in 1987. Said prospectus stated that all the proceeds of the offering would be used for financing the construction and purchase of three vessels for the transportation of liquefied gases and that the business of the company would be the transportation of liquefied gases.

10. In or about 1974 the defendants caused Universal to sell the contracts for two of the aforesaid vessels receiving twenty-five million dollars on the sale, fourteen million dollars of which was profit.

11. Thereafter on or about August 1975 defendants caused Universal to issue 4,200,000 shares of its stock to defendant Maritimecor for all of the latter's assets other than 2,800,000 shares of stock of Universal already held by Maritimecor, its parent, plus its liabilities.

12. Upon information and belief the aforesaid sale and purchase of Universal's stock was fraudulent in that the assets of Maritimecor were overpriced and of insufficient value, and included an approximately $7,000,000 debt from Maritimecor to Universal, and the

purpose and intent of said transaction was to dilute the interests of the public shareholders of Universal and cause the dissipation of the assets of Universal which were at the time in excess of fourteen million dollars.

13. Defendants, upon information and belief, knew at the time, or had reasonable cause to know and were negligent in not ascertaining, that the net value of the assets of Maritimecor was far less than the value of the shares of Universal issued to Maritimecor.

14. The aforesaid transaction had no business purpose and was of no business benefit to Universal, and this fact was fully known to all defendants, was not an arms' length transaction, represented a sale of Universal common stock at less than its fair market value, represents self dealing and preempting a corporate opportunity by the defendants, and constitutes a gross, wanton and wilful breach of their fiduciary duty to Universal and its stockholders.

15. In or about 1975 defendants caused Universal to enter into a contract with Swan Hunter Shipbuilders, Ltd. for the construction of "Product Carriers" at an unwarranted and excessive price.

16. Swan Maritime Ltd., a British corporation, 75% of which was owned by defendant Maritimecor and 25% owned by Swan Hunter Group Ltd. had originally contracted for the construction of the said "Product

Carriers" with Swan Hunter Ship Builders, Ltd. which controls Swan Hunter Group Ltd. Swan Maritime Ltd. cancelled its contract and Swan Hunter Shipbuilders Ltd. then entered into the said contract with Universal. On its cancellation, Swan Maritime Ltd. realized a gain of approximately $4,000,000.

17. The manipulations by defendants and the various other entities which they controlled and/or influenced, caused Universal's contract price to be inflated by $4,000,000.

18. During 1974 and 1975, prior to the aforesaid transfer of Universal shares to Maritimecor, defendants caused loans to be made by Maritimecor so that at the time of said transfer approximately $7,000,000 was owed to Universal by Maritimecor.

19. The issuance of the aforesaid prospectus and the foregoing transactions constituted the employment of a device, scheme or artifice to defraud, the making of untrue statements of material fact and the omission to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and the engaging in acts, practices, and courses of conduct which operated as a fraud or deceit upon Universal, as the seller of said 4,200,000 shares of Universal's common stock and upon Universal's public minority stockholders.

20. Defendants caused the aforesaid material false and misleading prospectus to be prepared and disseminated with full knowledge of the aforesaid facts and with full knowledge of the falsity or with wanton and reckless negligence and disregard of the undisclosed truth and of the falsity of said statements.

21. The aforesaid conduct was in connection with the purchase or sale of securities, to wit, the sale of Universal stock to Maritimecor for the latter's assets.

22. By reason of the foregoing Universal has been damaged in an indeterminate amount.

DEMANDS

23. Demand upon the Board of Directors of Universal to bring this action would be futile and is unnecessary because defendants dominate and control the directors of Universal, defendant corporation Maritimecor now owns over 90% of the outstanding stock of Universal and in turn is 96% owned by defendant Maritime Fruit, for the most part the same people are the Universal directors and the corporate defendants' directors, the individual defendants have approved of, and participated in the wrongful transactions herein set forth and are liable jointly and severally, for the damaged sustained by Universal.

24. Demand upon the shareholders of Universal would also be futile and is unnecessary because over 90% of the outstanding shares are owned by defendant Maritimecor and the wrongful transactions herein are in any event incapable of shareholder ratification.

25. Plaintiff believes, without limitation, that the Court may find the following legal theories of relief, among others, to be applicable to the facts which plaintiff will prove:

(a) Violations of §10(b) of the Exchange Act and of Rule 10B-5 promulgated thereunder by the Securities and Exchange Commission, 17CFR; and

(b) Breach of common law fiduciary duties owed by corporate directors, officers, persons and entities to the information which they purportedly serve and to its stockholders.

WHEREFORE, plaintiff demands judgment:

(a) Against all defendants and in favor of nominal defendant Universal, cancelling and rescinding the transactions herein complained of, and cancelling the issuance of the aforesaid 4,200,000 shares of Universal common stock;

(b) Against all defendants and in favor of Universal for all damages which Universal has sustained and will sustain as a result of their wrongful conduct;

(c) Requiring defendants to account to Universal for the profits made by them and the damages sustained by Universal;

(d) Assessing punitive damages against defendants in the amount of $10,000,000;

(e) Awarding plaintiff the costs and expenses of this action, including reasonable attorneys and accountants' fees; and

(f) Such other and further relief as may be just.

Dated: New York, New York
February 3, 1976

TURCHIN & TOPPER

By: _____
A Member of the Firm
Attorneys for Plaintiff
Office & P.O. Address
60 East 42nd Street
New York, New York 10017
(212) MO 1-0420

A 16

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Morton J. Turchin, being duly sworn, deposes and says: that he is a member of the firm of Turchin & Topper, attorneys for plaintiff in the within action; that he has read the foregoing Verified Compalint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Deponent states that the reason he makes this verification is that the plaintiff resides in the State of Florida, and plaintiff's attorneys maintain their office in the County, City and State of New York; and deponent further states that the sources of his information and belief are from the memoranda, documents, reports and other related records in the file of this action, which file is in your deponent's possession, including copies of the prospectus, reports and news releases.

Morton J. Turchin

Sworn to before me this
3rd day of February, 1976

PAULINE DEL GIUDICE
Notary Public, State of New York
No. 24-0127000
Qualified in Queens County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS AND OIL COMPANY INC., : 76 Civ. 555 (ML)

Plaintiff, :

-against- : NOTICE OF MOTION

YAACOV MERIDOR, et al., :

Defendants. :

----------x

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of J. Portis Hicks sworn to June 1, 1976, the complaint and all other prior pleadings and proceedings had herein, the undersigned defendant Universal Gas and Oil Company Inc., will move this Court at 10:00 A.M. on the 14th day of June, 1976 or as soon thereafter as counsel may be heard, in Room 1903 of the United States Court House, Foley Square, New York, New York, for an order pursuant to Section 627 of the Business Corporation Law of the State of New York and Rule 2 of the Civil Rules of this District Court staying this action and any further proceedings herein until such time as plaintiff shall have posted reasonable security for expenses and costs including reasonable attorneys' fees incurred and to be incurred herein by said defendant.

Dated: New York, New York
June 1, 1976

Yours, etc.

WENDER, MURASE & WHITE
Attorneys for Defendant
Universal Gas and Oil
Company Inc.
400 Park Avenue
New York, New York 10022
(212) 832-3333

TO: TURCHIN & TOPPER
Attorney for Plaintiff David Goldberg
60 East 42nd Street
New York, New York 10017

MUDGE, ROSE, GUTHRIE & ALEXANDER
Attorneys for Defendant Ara A. Cambere
20 Broad Street
New York, New York 10005

COUDERT BROTHERS
Attorneys for Defendant H. Struve Hensel
200 Park Avenue
New York, New York 10017

TOWNLEY, UPDIKE, CARTER & RODGERS
220 East 42nd Street
New York, New York 10017
HOWREY & SIMON
1730 Pennsylvania Avenue N. W.
Washington, D. C. 20006
Attorneys for Defendant Martin Siem

SINGER, HUTNER, LEVINE & SEEMAN
Attorneys for Defendant Henry Singer
110 East 59th Street
New York, New York 10022

WILLKIE FARR & GALLAGHER
Attorneys for Defendant Mila Brener
and Yaacov Meridor
One Chase Manhattan Plaza
New York, New York 10005

MARSHALL, BRATTER, GREENE, ALLISON & TUCKER
Attorneys for Defendants Davidor Meridor, S. Erell, Gideon
Ben Aaron, Haim Rafaeli, Jacob Sutton, Maritimecor S.A.
and Maritime Fruit Carriers Company Ltd.
430 Park Avenue
New York, New York 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY INC.,

Plaintiff,

-against-

YAACOV MERIDOR, et al.,

Defendants.

76 Civ. 555 (ML)

AFFIDAVIT

- X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

J. PORTIS HICKS, being duly sworn, deposes and says as follows:

1. I am a member of the law firm of Wender, Murase & White, attorneys herein for Universal Gas and Oil Company Inc. ("UGO"), the nominal corporate defendant in this shareholders derivative action. I make this affidavit in support of UGO's present motion, made pursuant to Section 627 of the Business Corporation Law of the State of New York and Rule 2 of the Civil Rules of this District Court, for an order staying this action, and any further proceedings herein, until such time as plaintiff shall have posted security for UGO's expenses and costs to be incurred in this action, including reasonable attorneys' fees. UGO also request an order dismissing this action should plaintiff fail to post such security.

2. This action was commenced by the filing of a complaint with this Court on or about February 3, 1976. In addition to the nominal defendant UGO, two other corporations and eleven individuals are named as defendants (see copy of complaint annexed hereto as Exhibit "A"). Upon information and belief, most of the defendants herein reside or have their principal executive offices outside the United States. Based on marshal's returns on file with this Court, it appears that less than two-thirds - nine out of the fourteen defendants - were personally served with the summons and complaint. As of the date hereof counsel is informed and believes that aside from defendant UGO, the thirteen other defendants herein have appeared or will shortly appear, by seven law firms. Accordingly, the fourteen defendants herein are to be represented by eight different law firms.

3. The complaint purports to assert a single derivative claim in favor of UGO. That single claim is founded simultaneously in both the Securities Exchange Act of 1934 and in state law (apparently common law of the State of New York). In summary, the complaint alleges that defendants conspired to enrich defendants Maritimecor S.A. ("Maritimecor") and Maritime Fruit Carriers Company Limited ("MFC"), pursuant to a scheme under which UGO first raised funds from the public in a public offering, and then by various other business transactions allegedly described in the complaint, which occurred over a period of

several years, shifted the proceeds of that offering to defendants Maritimecor and MFC (see complaint at para. "8"). Such transactions are variously described in the complaint as fraudulent, negligent, without business purpose and as constituting self-dealing and breach of fiduciary duty (see complaint at paras."8" through "18" inclusive).

4. From reading the complaint, it appears that the May, 1972 public offering of UGO shares was not the "purchase or sale of securities" which allegedly forms the basis for the Securities Exchange Act claim. It appears, instead, that plaintiff claims that such purchase or sale occured in August, 1975 by reason of an alleged issuance by UGO of 4,200,000 shares of UGO stock to defendant Maritimecor in exchange for Maritimecor assets (see paras. "11" and "21" of complaint). In this respect, plaintiff errs on fundamental fact. While UGO and Maritimecor did make an agreement in August, 1975 to issue UGO shares to Maritimecor in exchange for Maritimecor assets, that transaction has to date not been consummated, nor has it been determined what number of shares may be issued by UGO to Maritimecor. The August 1975 UGO/Maritimecor agreement, as amended, merely provides that in accordance with valuations to be made by accountants, an amount of no more than 4,200,000 UGO shares will be issued to Maritimecor in exchange for the Maritimecor assets.

5. The complaint is framed in such a manner as to make it impossible to determine which allegations are intended

to support the Securities Exchange Act claim and which allegations are intended to support the state law claim as to which pendent jurisdiction is invoked. Thus, while plaintiff alleges that the transactions described in the complaint constituted "...the employment of a device, scheme or artifice to defraud, the making of untrue statements of material fact and the omission to state material fact...", etc., (see para. "19" of complaint), thereby clearly intending to characterize such transactions as violations of Section 10(b) of the Securities Exchange Act and Rule 10B-5 adopted pursuant thereto, at the same time, and in the same single claim, plaintiff characterizes the same transactions as giving rise to a claim under state law (see, e.g., complaint at paras. "12" and "14").

6. Accordingly, the single claim of the complaint is, at best, an intermingled Securities Exchange Act and state law claim. Indeed, plaintiff's demand for relief (see complaint at para. "25") also confirms his "shotgun" approach. There, plaintiff asserts that this Court may grant relief on the allegations of the complaint pursuant to both Section 10(b) of the Securities Exchange Act (and Rule 10B-5 adopted pursuant thereto), and pursuant to state law, without any effort whatsoever to distinguish or determine which allegations are intended to support which claim or which demand for relief.

7. Plaintiff alleges that he owns five units of UGO's May, 1972 public offering (see complaint at para. "13"). Assuming such is the case for purposes of this motion, those five

units comprise 165 shares of common stock and five 8% convertible subordinated debentures (the latter due in June, 1987). Upon information and belief, at no time during the period May 4, 1972 to today's date has the common stock of UGO sold at a price of greater than $11.00 per share, i.e., at no time did those 165 shares of common stock have a market value of more than $1,815.00. On February 3, 1976, the date of filing of the complaint those shares had a market value of approximately $495.00. Based on the number of shares of common stock issued and outstanding on completion of the May 4, 1972 offering (3,663,000 shares of common stock including the public offering), and on February 3, 1976 (3,597,000 shares of common stock), the 165 shares of common stock owned by plaintiff have at no time constituted more than one one-hundredth of one percent of UGO's issued and outstanding shares.*

8. If the individual defendants are successful in this action, they will be entitled pursuant to Section 725 of the Business Corporation Law of the State of New York to recover their expenses, including attorneys' fees, from UGO. UGO's certificate of incorporation and bylaws also provide a right of indemnification to its officers and directors (see copies of relevant excerpts from UGO certificate and bylaws annexed hereto as Exhibit "B").

* Values and percentages which are not materially different apply to the five convertible debentures allegedly owned by plaintiff.

9. As may be seen in greater detail in defendant UGO's memorandum of law submitted in support of this motion, the New York Business Corporation Law also requires that if a plaintiff in a derivative action does not own 5% or $50,000 in value of any class of shares of the nominal defendant corporation, that corporation is entitled to require that the plaintiff post security for the corporation's expenses, including attorneys' fees, both of the corporation and of other parties to whom the corporation may become liable for such expenses. In this action, eleven individual defendants (present or former officers and directors of UGO) have a right to claim such indemnification from UGO.

10. An additional right to apply for security for costs based in the discretion of this Court, is granted under Rule 2 of the Civl Rules of this Court. That Civil Rule does not make the requirement of the posting of security dependent upon any minimum shareholding, but instead leave the granting of such security for costs to the discretion of the Court.

11. In view of the nature of plaintiff's wide-ranging and tenuous claim, the number of parties involved and their locations outside this jurisdiction, and the extensive discovery which will necessarily occur herein, significant security for expenses should be required by this Court of plaintiff in favor of UGO, both under the New York Business Corporation Law, and in the discre-

tion of this Court under Civil Rule 2:

(a) While the complaint appears to state an intermingled Securities Exchange Act and state law claim, the Securities Exchange Act aspects of the complaint, insofar as they can be isolated, are grounded in allegations which are tenuous at best. For example, while the fundamental requirement of a purchase or sale of securities is alleged to have occurred, in fact it has not. Such fact may well be fatal to plaintiff's purported claim insofar as its rests in the Securities Exchange Act of 1934. There having been no "purchase or sale" as yet, the Securities Exchange Act aspects of the claim may be non-existent, and require that this action be pursued in another forum. Since the quality of plaintiff's Securities Exchange Act claim is doubtful, this Court should exercise its discretion to insure that should plaintiff's federal claim be dismissed, defendant UGO will be indemnified for its expenses incurred in connection with defense of that claim, including expenses and attorneys' fees of the UGO officers and directors named as defendants herein.

(b) Equally important to the issue of UGO's right to substantial security is the obvious effect

of plaintiff's wide-ranging claim on the extent of discovery to be conducted. In this action, we are dealing with an alleged conspiracy, purportedly made years ago, which according to plaintiff resulted in damages of millions of dollars flowing from conduct carried out over a period of several years by a group of eleven individuals and two corporations. This is not mine-run commercial litigation. Obviously, extensive discovery will be required in this action to prove or disprove plaintiff's wide-ranging claim.

(c) Furthermore, the claim asserted in the complaint is of a very serious nature. Plaintiff asserts that the defendants conspired to defraud UGO and its public shareholders, that they were negligent, that they grossly, wantonly and wilfully breached their fiduciary duty to UGO and its shareholders, that they engaged in acts and practices which operated as a fraud or deceit, and that they engaged in self-dealing. Plaintiff demands that the transactions of which he complains be rescinded, that unspecified damages be granted against defendants in favor of UGO, that defendants be required to account for unspecified profits allegedly made by them and that they be required to pay unspecified dmages allegedly sustained by UGO, that defendants be assessed punitive damages in a sum of $10,000,000, and that plaintiff be awarded costs and expenses of this action

including attorneys' fees (see demand at pages 9 and 10 of the complaint). The extent of discovery to be conducted will therefore also be affected by the nature of plaintiff's claim, since it can be expected to generate vigorous defenses in view of the serious charges made personally against the individual defendants.

(d) It is also relevant to this Court's consideration of the amount of security which plaintiff should post, that the parties defendant, as well as plaintiff herein, are resident in and have their principal executive offices in widely divergent locations. Upon information and belief, the parties are located as follows:

i. Defendant MFC is an Israeli corporation having its principal executive office in Haifa, Israel.

ii. Defendant Maritimecor is a Panamanian corporation having its principal executive office in Zurich, Switzerland.

iii. Nominal defendant UGO is a Panamanian corporation having its principal executive office in Hamilton, Bermuda (and also having a principal place of business in this judicial district).

iv. Defendant Ara A. Cambere is a United States citizen, and resides in this judicial district.

v. Defendant Yaacov Meridor is an Israeli citizen and resides in Tel Aviv, Israel.

vi. Defendant David Meridor is an Israeli citizen and resides in Tel Aviv, Israel.

vii. Defendant Martin Siem is a Norwegian citizen and resides in Oslo, Norway.

viii. Defendant Henry A. Singer is a U. S. citizen and resides in this judicial district.

ix. Defendant Mila Brener is an Israeli citizen and resides in Haifa, Israel.

x. Defendant Shlomo Erell is an Israeli citizen and resides in Haifa, Israel.

xi. Defendant Aaron Ben Gideon is an Israeli citizen and resides in Haifa, Israel.

xii. Defendant H. Struve Hensel is a U.S. citizen and resides in this judicial district.

xiii. Defendant Haim Rafaeli is an Israeli citizen and residens in Naharea, Israel.

xiv. Defendant Jacob Sutton is an Israeli citizen and resides in Zurich, Switzerland.

xv. Plaintiff David Goldberg is upon information and belief a U.S. citizen, and claims that he resides in the State of Florida.

(e) Even if the discovery necessary to this action can all be conducted in the United States, and even if the foreign defendant corporations and individuals and witnesses, will or can be by law compelled to personally appear in this judicial district and to produce their books and records here, the very number of defendants and witnesses, and the extra expense of conducting their discovery in view of their divergent locations, will add substantially to the financial burden of this litigation on UGO. It should be borne in mind, as well, that extensive discovery will undoubtedly be conducted herein by all parties, not just by plaintiff of the defendants and witnesses, but also by defendants of plaintiff and those witnesses, and by defendants of each other to prove their defenses and should cross-claims be asserted.*

(f) The expense of this litigation to UGO will not merely involve the expense of depositions of the plaintiff and the fourteen defendants and various witnesses and attorneys' fees incurred in connection with preparation for and the taking and attendance of those depositions. UGO is informed and believes, as well, that some defendants may contest

*One defendant, Martin Siem, has already evidenced his intention to this Court (before Magistrate Bernikow on April 21), to assert cross-claims against other individual defendants.

the personal jurisdiction of this Court, which of course will involve additional pretrial proceedings. It is apparent that UGO may also be subjected to payment of travel expenses of counsel should it develop that discovery must be conducted in other jurisdictions (as appears likely in view of the residence of most of the parties and many witnesses in other jurisdictions). Obviously, other discovery as provided for by the Federal Rules of Civil Procedure will also be conducted. Still further, the trial of plaintiff's far-reaching claim obviously would be lengthy.

12. This plaintiff is owner of but 165 shares of stock, which at the commencement of this litigation had a market value of less than $500, and which today have no market value. Plaintiff is about to thrust these parties into expensive litigation, the monetary burden of which falls upon UGO. UGO believes that security in the amount of $500,000 should be required of plaintiff, subject to increase or decrease upon appropriate application later, should an increase or decrease appear justified on the facts.

13. A reasonable estimate of the expenses which will be incurred in this action can be easily demonstrated looking to

the question of depositions alone. Let us assume, for example, that all deposition discovery will be conducted in this judicial district, and that each defendant's law firm will merely be charging its client for 8 hours of service per day, at an assumed rate of $60 per hour (which, as this Court will recognize, is much less than normal actual billing rates in New York). The total expense of depositions, in terms of legal fees alone, will be almost $4,000 per day ($20,000 for each five day week of deposition discovery). Obviously, expenses will be incurred at the same level during all other phrases of discovery and other pretrial proceedings herein. Even at an unrealistically low figure of $20,000 per full working week of pretrial legal representation, and expecting a mere 25 weeks of services to be rendered by the eight law firms representing defendants herein, in defense of a claim which touches on numerous business transactions of UGO (including transactions with non-party witnesses), no reasonable person could doubt that total expenses subject to indemnification of $500,000 will be easily reached in this action. Since UGO may well be subjected to that expense, it should have the security therefor.

14. For the foregoing reasons, defendant UGO respectfully requests that this Court enter an order staying this action and any further proceedings herein until such time as plaintiff herein shall have posted reasonable security for UGO's expenses in this action, in an amount of at least $500,000, or such other

amount as may seem just and proper to this Court. UGO requests also that such order provide that if plaintiff should fail to post such security, this action shall be dismissed.

J. Portis Hicks

Sworn to before me this
1st day of June, 1976

Pamela Roth
Notary Public

PAMELA ROTH
Notary Public, State of New York
No. 41-4622480
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1977

UGO CERTIFICATE OF INCORPORATION - EXCERPT

11. Indemnity. Any person made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a Director, officer or employee of this corporation or of any corporation which he serves as such at the request of this corporation, shall be indemnified by this corporation against reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, Director or employee is liable for negligence or misconduct in the performance of his duties. Such right of indemnification shall not be deemed exclusive of any other rights to which such Director, officer or employee may be entitled.

Exhibit B

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UGO BYLAWS - EXCERPT

SECTION 5. Indemnification of Directors and Officers. Any person made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director or officer of the corporation or of any corporation which he served as such at the request of the corporation shall be indemnified by the corporation against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer or director is liable for negligence or misconduct in the performance of his duties. The foregoing right of indemnification shall not be deemed exclusive of any other rights to which any officer or director may be entitled.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID GOLDBERG, suing derivately in the right and for the benefit of UNIVERSAL GAS AND OIL COMPANY INC.,

Plaintiff,

-against-

YAACOV MERIDOR, et al.,

Defendants.

76 Civ. 555 (ML)

ORDER

WHEREAS, defendant Universal Gas and Oil Company Inc. has moved this Court for an order pursuant to §627 of the New York Business Corporation Law and Rule 2 of the Civil Rules for the Southern District of New York staying all proceedings herein pending the posting of security for its costs and expenses in this action, including reasonable attorneys' fees, and for certain other relief referred to in said defendant's Notice of Motion dated June 1, 1976; and

WHEREAS, plaintiff herein has moved this Court for an order directing that defendant Universal Gas and Oil Company furnish a list of its shareholders to plaintiff, to which said defendant has consented, on the conditions hereinafter set forth, and for certain other relief referred to in plaintiff's Notice of Cross-Motion dated June 10, 1976; and

WHEREAS, this Court rendered its decision with respect to said motions on July 12, 1976 in which it held, among other things, that defendant Universal Gas and Oil Company Inc. is entitled to substantial security for its costs and expenses herein including attorneys' fees, unless plaintiff obviates the need therefor as hereinafter set forth; and

WHEREAS, plaintiff has informed this Court that in all likelihood he would be unable to post any substantial amount of security for such costs and expenses; and

WHEREAS, defendant Universal Gas and Oil Company Inc. has agreed to furnish plaintiff with a listing of its shareholders of record as of July 13, 1976, as prepared by its transfer agent, upon the signing of this Order;

NOW, upon reading the Notice of Motion of defendant Universal Gas and Oil Company Inc. and the affidavit of J. Portis Hicks in support thereof sworn to June 1, 1976, the Notice of Cross-Motion of Plaintiff and the affidavit of Morton J. Turchin in support thereof sworn to June 10, 1976, the memorandum of defendant Martin Siem in partial opposition to the motion of Universal Gas and Oil Company Inc. dated June 9, 1976, the affidavits of William Rand sworn to June 11, 1976, of Richard L. Bond sworn to June 11, 1976, of Lawrence V. Senn Jr. sworn to June 14, 1976, of Chester J. Straub, Esq. sworn to June 11, 1976,

and of Jay W. Seeman sworn to June 16, 1976 in support of the aforesaid motion, the reply affidavid of J. Portis Hicks sworn to June 15, 1976, and the reply affidavit of Morton J. Turchin sworn to June 16, 1976,

IT IS HEREBY ORDERED AS FOLLOWS:

1. No more than 30 days from the date of receipt by plaintiff's counsel of a list of shareholders of Universal Gas and Oil Company Inc. as of July 13, 1976, plaintiff shall on notice to defendants file with the Court appropriate proof that plaintiff, or plaintiff together with others who have been permitted by the Court to intervene in this action, meet the requirements of New York Business Corporation Law §627 for exemption from the requirements of posting security; or

2. If plaintiff shall fail to file the appropriate proof referred to in paragraph 1 of this Order, then no more than 37 days from the date of receipt of the Universal Gas and Oil Company Inc. shareholders list, plaintiff shall amend his complaint in this action to eliminate any and all claims based on or arising out of state common law or state statutory law; or

3. If plaintiff shall fail to satisfy the requirements of either paragraph 1 or paragraph 2 of this Order, plaintiff shall be required to post security for the expenses and costs of defendant Universal Gas and Oil Company Inc. in this action, in an amount and within a period of time to be determined by the Court.

4. If plaintiff shall fail to meet the requirements of paragraph 1 or 2 or 3 of this Order, the complaint herein shall be dismissed by the Court.

5. Pending plaintiff's meeting of the requirements of paragraph 1 or 2 or 3 of this Order, all discovery and other proceedings herein, other than as referred to in this Order, shall be and hereby are stayed, unless otherwise ordered by the Court.

6. See Attached Flag.

~~6. Upon plaintiff's meeting of the requirements of paragraph 1 or 2 or 3 of this Order, each defendant herein shall, within 20 days thereof, serve an answer.~~

7. Within 50 days of plaintiff's meeting of the requirements of paragraph 1 or 2 or 3 of this Order, defendant Siem shall take and complete the depositions of defendants Singer, Hensel and Cambere, and any party may take and conclude the deposition of defendant Siem if any such party elects to take defendant Siem's deposition at the conclusion of the Singer,

6. Upon plaintiff's meeting of the requirements of paragraph 1 or 2 or 3 of this Order, each defendant herein shall, within 20 days thereof, serve an answer, motion or other response to the complaint. Plaintiff and defendants shall be free to notice discovery, including depositions, on and after the date for filing of each such answer, motion or other response to the complaint. Any such answer may be amended once as of right to assert any new matter or defense including but not limited to defenses relating to personal and subject matter jurisdiction of this Court, at any time within 30 days following completion of the previously noticed depositions on oral testimony of defendants Cambere, Singer and Hensel by defendant Siem, and the deposition on oral testimony of defendant Siem if any party hereto elects to take his deposition at the conclusion of the Cambere, Singer and Hensel depositions.

Hensel and Cambere depositions. Defendants shall have the right to serve an amended answer to assert any new matter or defense including but not limited to defenses relating to personal and subject matter jurisdiction of this Court within 20 days after the completion of the last deposition held of defendants Singer, Hensel, Cambere and, if taken, defendant Siem.

8. The shareholder list of defendant Universal Gas and Oil Company Inc. which is to be furnished to plaintiff is, for purposes of this litigation, a confidential document and shall not be disclosed by plaintiff to any person, and shall be used by plaintiff solely for the purposes of communicating to shareholders of defendant Universal and Oil Company Inc., in substance, the following information:

a. That plaintiff has commenced a shareholders' derivative action against the above named defendants, in which plaintiff alleges fraud, mismanagement, negligence and self-dealing by said defendants, and claims that the conduct of said defendants has injured and damaged defendant Universal Gas and Oil Company Inc., and specifying the nature of each transaction referred to in the complaint as to which plaintiff claims such wrongful conduct occurred; and

b. That plaintiff's action is brought derivatively, allegedly for the benefit of the corporation, that no direct monetary recovery will inure to any shareholder should plaintiff prevail in

this action, but only to the corporation, and that any shareholder joining in this action may be liable to contribute to taxable costs hereof should defendants prevail.

No other information may be communicated to said shareholders by plaintiff without prior approval of this Court.

Dated: July 27, 1976

IT IS SO ORDERED

Edward R. Neaher

U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

DAVID GOLDBERG suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.,

Plaintiff,

- against -

YAACOV MERIDOR, MILA BRENER, DAVID MERIDOR, S. ERELL, GIDEON BEN AARON, ARA A. CAMBERE, H. STRUVE HENSEL, HAIM RAFAELI MARTIN SIEM, JACOB SUTTON HENRY A. SINGER, MARITIMECOR, S.A., MARITIME FRUIT CARRIERS COMPANY, LTD., HORNBLOWER & WEEKS, HEMPHILL NOYES, INC., LAVENTHOL & HORWATH a/k/a LAVENTHOL KREKSTEIN, HORWATH & HORWATH, DR. JACOBO DAMM, DR. MAX LEBEDKIN, ELIE HOUSMAN, H. L. FEDERMAN, WILLIAM J. FRIEDMAN, MERRIL M. HALPERN, PER HYSING-DAHL, ANDRE MONTELL, FRITZ KONIG, ZEV LEVIN, RAYMOND CALIEZI,

Defendants,

- and -

UNIVERSAL GAS & OIL COMPANY, INC.,

Nominal Defenant.

- -x

AMENDED VERIFIED COMPLAINT

DERIVATIVE STOCKHOLDERS' ACTION

PLAINTIFF DEMANDS TRIAL BY JURY.

76 CIV 555 (ML)

Plaintiff, stockholder of Universal Gas & Oil Company, Inc., suing derivatively in the right and for the benefit of said corporation, complaining of the defendants herein by Turchin & Topper, his attorneys, respectfully shows to this Court and alleges:

FEDERAL JURISDICTION AND VENUE

1. Federal jurisdiction is based upon §27 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") 15 USC §78 aa, and the provisions of 28 USC §1337. This is not a collusive action to confer jurisdiction on a court of the United States which it would not otherwise have.

2. Venue of this action is properly laid in the Southern District of New York because upon information and belief each of the defendants, including the nominal defendant, either has an agent or transacts business within said District, or the transactions complained of occurred in this District, or said transactions had an impact on stockholders in this District.

PARTIES TO THE ACTION

3. Plaintiff, David Goldberg, resides in Miami Beach, Florida, and since approximately May 4, 1972 has continuously been and is now the record and beneficial owner of 165 shares of the common stock of defendant Universal Gas & Oil Company, Inc. ("UGO") having purchased five (5) units of the May 1972 UGO public offering of common stock and convertible debentures.

4. Plaintiff was a shareholder of UGO at the time of the transactions of which he complains and has been such shareholder at all times since then. He will fairly and adequately represent the interests of the shareholders of UGO similarly situated in enforcing UGO's rights.

5. Nominal defendant, UGO, is a corporation with a principal place of business at 122 East 42nd Street, New York, New York 10017. It was organized and incorporated in Panama in 1970 under the name Universal Gas Ltd., Inc. and in 1971 its name was changed to Universal Gas & Oil Company, Inc. At all times relevant hereto, UGO has been and is now a "reporting" company subject to the provisions of §15(d) of the Exchange Act and its stock is traded in the over-the-counter market in the United States.

6. All individual defendants, upon information and belief have at all relevant times been and are now directors and in some cases officers of either UGO, defendant Maritimecor, S.A. or Maritime Fruit Carriers Company, Ltd., as detailed in the following table:

Defendants	UGO	Maritime Fruit Carriers Company Ltd.	Maritimecor, S.A.
Yaacov Meridor	Co-Chairman of Board	Co-Chairman of Board	
Mila Brener	Co-Chairman of Board	Co-Chairman of Board	
David Meridor	Vice President-Treasurer Director		
S. Erel	Vice-President Director		
Henry A. Singer	Secretary Director	Counsel	Counsel
Haim Rafaeli	Director Chairman Executive Committee	Principal Accounting Officer	
Jacob Sutton	Director	Director	Chief Executive Officer and Managing Director
Gideon Ben Aaron	Director	Secretary	
A[illegible] A. Cambere	Director	Director	
H. Struve Hensel	Director		
Martin Siem	Director		
Dr. Jabobo Damm		Director	Vice President Director
Dr. Max Lebedkin		Director	Secretary Director

Defendants	UGO	Maritime Fruit Carriers Company Ltd.	Maritimecor, S.A.
Elie Housman		Director Ass't Secretary	
H. L. Federman		Director	
William J. Friedman		Director	
Merril M. Halpern		Director	
Per Hysing-Dahl			Treasurer-Director
Raymond Caliezi			Director
Fritz Konig			Director
Zev Levin			

7. Defendant Maritimecor, S.A. ("Maritimecor") is a corporation organized and incorporated under the laws of Panama and upon information and belief it is wholly owned by defendant Maritime Fruit Carriers Company Ltd. which is a corporation organized and incorporated under the laws of Israel with a principal office at 122 East 42nd Street, New York, New York 10017. Upon information and belief, prior to the events complained of herein, Maritimecor owned 78% of the outstanding shares of nominal defendant UGO.

8. Upon information and belief, defendant Hornblower & Weeks, Hemphill, Noyes, Inc. (Hornblower) is a domestic corporation doing investment banking business at One Hanover Square, in the City, County and State of New York.

9. Upon information and belief, defendant Laventhol & Horwath a/k/a Laventhol, Krekstein, Horwath & Horwath ("Laventhol") are certified public accountants doing business at 919 Third Avenue, New York, New York

FACTS CONSTITUTING THE CLAIM FOR RELIEF

10. The wrongful transactions hereinafter set forth were the result of a conspiracy or plan among the defendants, including defendant Hornblower acting both independently of and through its partner Cambere, for the purpose of enriching defendants Maritimecor and Maritime Fruit and damaging UGO. The scheme, upon information and belief, was to cause UGO to raise funds from the public by a public offering and then by various transactions hereafter set forth, including the transfer of UGO stock to Maritimecor for the latter's assets and liabilities, use the proceeds of the offering and the assets of UGO for the benefit of defendants Maritimecor and Maritime Fruit.

11. On or about May 4, 1972 defendants caused UGO to issue, through the use of the mails and instrumentalities of interstate commerce, a prospectus offering for sale 11,000 units consisting of 363,000 shares of common stock and $11,000,000 worth of 8% convertible subordinated debentures due in 1987. Said prospectus stated that all the proceeds of the offering would be used for financing the construction

and purchase of three vessels for the transportation of liquefied gases and that the business of the company would be the transportation of liquefied gases.

12. In or about 1974 the defendants caused UGO to sell the contracts for two of the aforesaid vessels receiving twenty-five million dollars on the sale, fourteen million dollars of which was profit.

13. During 1974, and up to August 1975, defendants caused loans to be made by UGO so that by the time of the transfer hereinafter referred to, approximately $7,000,000 was owed to UGO by Maritimecor.

14. In or about August 1975 defendants caused UGO to enter into an agreement, thereafter amended, by which UGO was to issue up to 4,200,000 shares of its stock to its parent, defendant Maritimecor, for all of the latter's assets other than 2,800,000 shares of UGO stock already held by Maritimecor plus its liabilities.

15. Upon information and belief Maritimecor's assets and liabilities have been transferred to UGO.

16. Upon information and belief, the aforesaid agreement and transfer was fraudulent and unfair in that the assets of Maritimecor were overpriced and of insufficient value, the liabilities of Maritimecor either exceeded the value of its assets or were so great that the net asset value was insufficient consideration, the liabilities included a $7,000,000 debt to UGO from Maritimecor, and the purpose and intent of said transaction was to cause the dissipation of the substantial assets of UGO for the benefit of defendants, Maritimecor and Maritime Fruit.

17. Upon information and belief, defendants, including defendant Hornblower, which prepared an evaluation of Maritimecor and defendant Laventhol which participated in preparing the terms of the transfer, knew at the time, or had reasonable cause to know and were negligent in not ascertaining that the agreement and transfer were a fraud and unfair to UGO, and that the net value of the assets of Maritimecor was far less than the value of the shares of UGO to be issued to Maritimecor, or that Maritimecor's liabilities exceeded its assets.

18. The aforesaid transaction had no business purpose and was of no business benefit to UGO, and this fact was fully known to all defendants, was not an arms' length transaction, represented a sale of UGO common stock at less than its fair market value, represented self dealing, and constitutes an intentional, wanton and wilful breach of defendants fiduciary duty to UGO and its minority stockholders.

19. The issuance of the aforesaid prospectus and the foregoing transactions constituted the employment of a device, scheme or artifice to defraud, the making of untrue statements of material fact and the omission to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and the engaging in acts, practices, and courses of conduct which operated as a fraud or deceit upon UGO as the seller of up to 4,200,000 shares of UGO's common stock for Maritimecor's liabilities and assets, and upon UGO's minority stockholders.

20. Upon information and belief defendants engaged in the foregoing conduct and transactions with full knowledge of the aforesaid facts and with full knowledge of the falsity or with wanton and reckless negligence and disregard of the undisclosed truth and of the falsity of their statements.

21. The aforesaid conduct was in connection with the purchase or sale of securities, to wit, the sale of UGO stock to Maritimecor for the latter's assets and liabilities.

22. By reason of the foregoing UGO has been damaged in an undeterminate amount.

DAMAGE

23. Demand upon the Board of Directors of UGO to bring this action would be futile and is unnecessary because defendants dominate and control the directors of UGO, defendant Maritimecor now owns the majority of the outstanding stock of UGO and in turn is a wholly owned subsidiary of defendant Maritime Fruit, for the most part the same people are the UGO directors and the corporate defendants' directors, and the individual defendants have approved of, and participated in the wrongful transactions herein set forth and are liable jointly and severally for the damage sustained by UGO.

24. Demand upon the shareholders of UGO would also be futile and is unnecessary because the majority of the outstanding shares are owned by defendant Maritimecor and the wrongful transactions herein are in any event incapable of shareholder ratification.

25. Plaintiff believes, without limitation, that the Court may find §10(b) of the Exchange Act and of Rule 10B-5 promulgated thereunder by the Securities and Exchange Commission, 17 CFR, applicable to the facts which plaintiff will prove.

WHEREFORE, plaintiff demands judgment:

(a) Against all defendants and in favor of nominal defendant UGO, cancelling and rescinding the transactions herein

complained of, and enjoining the issuance of the aforesaid shares of UGO common stock to Maritimecor;

(b) Against all defendants and in favor of UGO for all damages which UGO has sustained and will sustain as a result of their wrongful conduct;

(c) Requiring defendants to account to UGO for the profits made by them and the damages sustained by UGO;

(d) Assessing punitive damages against defendants in the amount of $10,000,000;

(e) Awarding plaintiff the costs and expenses of this action, including reasonable attorneys and accountants' fees; and

(f) Such other and further relief as may be just.

Dated: New York, New York
August 23, 1976

TURCHIN & TOPPER

By: _____
A Member of the Firm
Attorneys for Plaintiff
Office & P.O. Address
60 East 42nd Street
New York, New York 10017
(212) MO 1-0420

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Morton J. Turchin, being duly sworn, deposes and says: that he is a member of the firm of Turchin & Topper, attorneys for plaintiff in the within action; that he has read the foregoing Amended Verified Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Deponent states that the reason he makes the verification is that the plaintiff resides in the State of Florida, and plaintiff's attorneys maintain their office in the County, City and State of New York; and deponent further states that the sources of his information and belief are from the memoranda, documents, reports and other related records in the file of this action, which file is in your deponent's possession, including copies of the prospectus, reports and news releases.

Morton J. Turchin

Sworn to before me this
23rd day of August, 1976.

PAULINE DEL GIUDICE
Notary Public, State of New York
No. 03-6127310
Qualified in Queens County
Commission Expires March 30, 1978

A 54

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

DAVID GOLDBERG, et al.,

Plaintiffs,

-against-

YAACOV MERIDOR, et al.,

Defendants.

76 CIV. 555 (MEL)

WHEREAS, defendant Martin Sieff, by letter to this Court dated August 31, 1976, has stated that paragraph 6 of the Court's Order of July 29, 1976, failed to fully reflect the intention of the Court and the parties previously expressed to permit defendants to file motions directed to the jurisdiction of this Court, motions to quash service of process and cross-claims after the filing of answers,

IT IS HEREBY ORDERED THAT paragraph 6 of the Court's Order of July 29, 1976, is amended as follows:

6. Upon plaintiff's meeting of the requirements of paragraph 1 or 2 or 3 of this Order, each defendant herein shall, within 20 days thereof, serve an answer, motion or other response to the complaint. Plaintiff and defendants shall be free to notice discovery, including depositions, on and after the date for filing of each such answer, motion or other response to the complaint. Any such answer may be amended once as of

fendant may also file motions relating to personal and subject matter jurisdiction of the Court, motions to quash service of process and cross-claims, such amendments, motions and cross-claims to be filed at any time within 30 days following completion of the previously noticed depositions on oral testimony of defendants Cambere, Singer and Hensel by defendant Siem, and the deposition on oral testimony of defendant Siem if any party hereto elects to take his deposition at the conclusion of the Cambere, Singer and Hensel depositions. The filing of an answer as required by this Order does not constitute an appearance or waiver of objection as to the service of process if such a defense is raised therein.

SO ORDERED:

Marvin E. Frankel

UNITED STATES DISTRICT JUDGE

Dated: September 17, 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.,

Plaintiff,

-against-

YAACOV MERIDOR, et al.,

Defendants,

-and-

UNIVERSAL GAS & OIL COMPANY, INC.,

Nominal Defendants.
----------X

76 Civ. 555 (ML)

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of Paul A. Feigenbaum, Esq., Shlomo Erell, Gideon Ben Aaron, Haim Rafaeli and Jacob Sutton, upon the Amended Complaint served by plaintiff, and upon all prior proceedings had herein, defendants Maritime Fruit Carriers Company Limited, Maritimecor, S.A., David Meridor, Gideon Ben Aaron, Shlomo Erell, Haim Rafaeli and Jacob Sutton will move this Court at Room 1903, United States Courthouse, Foley Square, New York, New York, before the Hon. Morris Lasker, one of the Judges of the within named Court on the 19th day of October, 1976 at 10:00 A.M. or as soon thereafter as counsel can be heard, for an order, pursuant to Rules 12(b)(2), (4), (5) and (6) of the Federal Rules of Civil Procedure, dismissing said Amended Complaint upon the grounds:

(1) that the Amended Complaint, which purports to state a claim under §10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder, and which purports to invoke jurisdiction of this Court based upon §27 of the Exchange Act, 15 U.S.C. §78aa and the provisions of 28 U.S.C. §1337, fails to state a claim upon which relief can be granted; and

(2) that this Court lacks personal jurisdiction over defendants Shlomo Erell, Gideon Ben Aaron, Haim Rafaeli and Jacob Sutton.

Dated: New York, New York
October 1, 1976

Yours, etc.,

MARSHALL, BRATTER, GREENE, ALLISON & TUCKER

By Richard L. Bond
A Member of the Firm
Attorneys for Defendants Maritime Fruit Carriers Company Limited, Maritimecor, S.A., David Meridor, Shlomo Erell, Gideon Ben Aaron, Haim Rafaeli and Jacob Sutton
430 Park Avenue
New York, New York 10022
(212) 421-7200

TO: TURCHIN & TOPPER
Attorneys for Plaintiff
60 East 42nd Street
New York, New York 10017

WENDER, MURASE & WHITE
Attorneys for Nominal Defendant
Universal Gas and Oil Company, Inc.
400 Park Avenue
New York, New York 10022

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.,

Plaintiff,

-against-

YAACOV MERIDOR, et al.,

Defendants,

-and-

UNIVERSAL GAS & OIL COMPANY, INC.,

Nominal Defendants.
----------X

76 Civ. 555 (ML)

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

PAUL A. FEIGENBAUM, being duly sworn, deposes and says:

1. I am an attorney associated with Marshall, Bratter, Greene, Allison & Tucker, attorneys for defendants Maritime Fruit Carriers Company Limited ("MFC"), Maritimecor, S.A. ("Maritimecor"), David Meridor, Shlomo Erell, Gideon Ben Aaron, Haim Rafaeli and Jacob Sutton in the above-entitled action, and am fully familiar with all proceedings heretofore had herein. I submit this affidavit in support of the motion of these defendants to dismiss plaintiff's amended verified complaint ("Amended Complaint"), in accordance with the provisions of Rule 12(b)(2), (4), (5) and (6) of the Federal Rules of Civil Procedure ("FRCP"), on the following grounds:

(a) the Amended Complaint fails to state a claim for relief, as it purports to do, under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), or Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission, 17 C.F.R. §240.10b-5; and

(b) this Court does not have jurisdiction over the persons of defendants Erell, Ben Aaron, Rafaeli and Sutton.

2. On or about February 3, 1976, plaintiff Goldberg commenced a purported shareholder's derivative action on behalf of Universal Gas and Oil Company, Inc. ("UGO") against MFC, Maritimecor and eleven individuals. The individuals are alleged to be officers and/or directors of nominal defendant UGO or of corporate defendants MFC or Maritimecor. The complaint ("Complaint") purported to assert a single derivative claim in favor of UGO, grounded simultaneously in the Exchange Act and in state law, apparently New York State common law.

3. In June, 1976, UGO, the nominal corporate defendant, moved to compel plaintiff to post security for the expenses and costs to be incurred by UGO in the defense of this derivative action. The basis for the motion was that the claim alleged was either purely a common law claim or, at best, a mixture of Federal securities law elements and common law elements as to which security for costs was

required under the applicable New York statutory provisions. Defendant's motion was granted by an order of this Court dated July 29, 1976, which held that UGO was entitled to substantial security for its costs and expenses unless plaintiff could obviate the need therefor either by meeting the requirements of New York Business Corporation Law §627 for exemption from the security requirement or, in lieu of such compliance, by amending the Complaint to eliminate any and all claims based on, or arising out of, state common law or state statutory law.

4. Subsequently, on or about August 27, 1976, plaintiff served the Amended Complaint, annexed hereto as Exhibit "A", apparently in an attempt to comply with the aforesaid order of this Court. The Amended Complaint purports to assert one cause of action, allegedly justifying rescission, injunctive relief, damages, an accounting for profits, punitive damages and costs, including reasonable attorneys' and accountants' fees. The Amended Complaint alleges that the defendants, now numbering 22 individuals, three corporations and an accounting firm, engaged in one scheme, commencing in 1972 and continuing into 1975, to cause UGO to raise funds from the public to enrich defendants MFC and Maritimecor (A.C. ¶10)*. Plaintiff alleges that, as an integral part of this scheme, defendants caused UGO to raise funds from the public by the issuance of a false and fraudulent prospectus ("Prospectus") in a May, 1972, public

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* Matter in parentheses refers to paragraphs of the Amended Complaint.

offering ("Public Offering") (A.C. ¶11). Plaintiff further alleges that defendants, in August, 1975, caused UGO to enter into an agreement with Maritimecor pursuant to which UGO was to issue shares of its stock to Maritimecor for all of the latter's assets and liabilities except certain shares of UGO stock held by Maritimecor ("1975 Transaction") (A.C. ¶14). Plaintiff alleges that the 1975 Transaction was "fraudulent and unfair" (A.C. ¶16), that it "had no business purpose and was of no business benefit to UGO ... was not an arms' length transaction ... represented self dealing, and ... [a] breach of defendants [sic] fiduciary duty to UGO and its minority stockholders" (A.C. ¶18). In an apparent attempt to comply with this Court's prior order regarding excision of all state common law statutory claims, plaintiff alleges that "[p]laintiff believes, without limitation, that the Court may find §10(b) of the Exchange Act and Rule 10B-5 promulgated thereunder by the Securities and Exchange Commission, 17 CFR, applicable to the facts which plaintiff will prove " (A.C. ¶25)

5. As the accompanying memorandum of law demonstrates, the Amended Complaint, which purports to invoke the jurisdiction of this Court based upon Section 27 of the Exchange Act, 15 U.S.C. §78aa, and the provisions of 28 U.S.C. §1337, fails to state a claim upon which relief can be granted pursuant to the Exchange Act because:

(a) plaintiff was not a shareholder of UGO at the time of the 1972 Public Offering and therefore has no

standing to assert, on behalf of UGO, a derivative claim based on that transaction;

(b) no damages are alleged to have been sustained by UGO as a result of the 1972 Public Offering, and at least as to that part of the Amended Complaint, no relief may be sought; and

(c) the Amended Complaint alleges no deception with respect to the 1975 Transaction, but rather complains only of the fairness of its terms, a claim outside the scope of §10(b). Instead, it is submitted, if any claim at all is stated in the Amended Complaint (a proposition that is not at all clear), its allegations would, at most, amount only to violations of corporate fiduciary duties imposed under applicable state statutory or common law.

6. Finally, the accompanying memorandum of law shows that the jurisdictional facts regarding the question of personal jurisdiction over defendants Erell, Ben Aaron, Sutton and Rafaeli (discussed in the accompanying affidavits of these defendants, submitted herewith*) are insufficient

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* Messrs. Erell, Ben Aaron, Sutton and Rafaeli all are residents of Israel. By means of communications by mail, telex and telephone, affidavits setting forth the jurisdictional facts have been prepared for, and approved by, each of these individuals and have been mailed to them overseas for execution. As of this date, we have not yet received the executed affidavits by return mail. Accordingly, in order to comply with the existing deadline for the filing of dismissal motions, we have served upon all counsel unexecuted photocopies of these affidavits, and are submitting unexecuted copies herewith for the information of the Court. We respectfully request leave to serve and file the executed affidavits as soon as we have received them.

to sustain personal jurisdiction over them because:

(a) the only acts of these foreign defendants with respect to the 1975 Transaction (the only securities transaction mentioned in the complaint with which they were involved) consisted of attendance at a UGO board of directors meeting outside the United States;

(b) it was not within the contemplation of any of these foreign defendants, nor could it have been reasonably contemplated, that the 1975 Transaction - in substance, a merger of two foreign corporations through the vehicle of a third foreign corporation - would have forseeable direct effects within the United States; and

(c) service of process upon defendant Erell was deficient, constituting an additional reason for dismissing this action against him.

7. By reason of the foregoing, it is respectfully requested that the above-described motion be granted in all respects, and that the Amended Complaint accordingly be dismissed.

Paul A. Feigenbaum

PAUL A. FEIGENBAUM

Sworn to before me this
1st day of October, 1976.

Stephen B. Cambi

Notary Public

[illegible]
[illegible] New York
[illegible]
[illegible] County
Commission [illegible] March [illegible], 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS AND OIL COMPANY INC.,

Plaintiff,

-against-

YAACOV MERIDOR, et al.,

Defendants.

76 Civ. 555 (ML)

NOTICE OF MOTION

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SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of J. Portis Hicks sworn to September 30, 1976, the Verified Complaint herein dated February 3, 1976 and the Amended Verified Complaint herein dated August 23, 1976, and all other pleadings and proceedings had herein, the undersigned defendant Universal Gas and Oil Company Inc., will move this Court at 10:00 A.M. on the 19th day of October, 1976 or as soon thereafter as counsel may be heard, in Room 1903 of the United States Court House, Foley Square, New York, New York, for an order pursuant to the Order of this Court dated July 20, 1976 and Section 627 of the Business Corporation Law of the State of New York and Rule 2 of the Civil Rules of this Court, requiring that plaintiff shall post security with this Court for said

defendant's expenses and costs in this action including reasonable attorneys' fees, and for dismissal of this action should plaintiff fail to post such security.

Dated: New York, New York
September 30, 1976

Yours, etc.

WENDER, MURASE & WHITE
Attorneys for Defendant
Universal Gas and Oil
Company Inc.
400 Park Avenue
New York, New York 10022

TO: TURCHIN & TOPPER
Attorneys for Plaintiff David Goldberg
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MUDGE, ROSE, GUTHRIE & ALEXANDER
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20 Broad Street
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COUDERT BROTHERS
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Attorneys for Defendant Martin Siem

SINGER, HUTNER, LEVINE & SEEMAN
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WILLKIE FARR & GALLAGHER
Attorneys for Defendants Mila Brener
and Yaacov Meridor
One Chase Manhattan Plaza
New York, New York 10005

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS AND OIL COMPANY INC., : 76 Civ. 555 (ML)

Plaintiff, : AFFIDAVIT

-against- :

YAACOV MERIDOR, et al., :

Defendants. :

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

J. PORTIS HICKS, being duly sworn, deposes and says as follows:

1. I am a member of the law firm of Wender, Murase & White, attorneys herein for Universal Gas and Oil Company Inc. ("UGO"), the nominal corporate defendant in this shareholders' derivative action. I make this affidavit in support of UGO's motion, made pursuant to an Order of this Court dated July 29, 1976 and pursuant to Section 627 of the Business Corporation Law of the State of New York and Rule 2 of the Civil Rules of this District Court, for an order setting the amount of security to be posted by plaintiff as security for UGO's expenses and costs to be incurred in this action, including reasonable attorneys' fees, and granting dismissal of this action should plaintiff fail to post such security. I also submit this affidavit in

support of, and joining in, the motion of certain other defendants for dismissal of plaintiff's complaint pursuant to Rule 12(b) of the Federal Rules of Court Procedure. Naturally, defendant UGO's present motion need be considered only if said motion for dismissal is for any reason denied.

2. By Order dated July 29, 1976, this Court directed that plaintiff either meet the requirements of Section 627 of the New York Business Corporation Law so as to obtain exemption from the requirement of posting security for UGO's expenses pursuant to that statute, or that he amend his complaint in this action to eliminate any and all claims based on or arising out of state common law or state statutory law, thereby removing the applicability of the state law regarding security for expenses and costs. This Court further ordered that should neither of such requirements of its Order be met by plaintiff, it would require that plaintiff post security for the expenses and costs herein of defendant UGO, in an amount and within a period of time to be determined by this Court. See paragraphs "1" through "3" of said July 29 Order, a copy of which is annexed hereto as Exhibit "A".

3. Insofar as counsel for UGO is aware, plaintiff made no effort to meet the requirements of paragraph "1" of the July 29 Order relating to exemption from posting of security pursuant to Section 627 of the New York Business Corporation Law. Plaintiff chose instead to serve and file an Amended Verified Complaint dated August 23, 1976, a copy of which is annexed

hereto as Exhibit "B" (hereinafter the "Amended Complaint" or "AC"), purporting to meet the requirements of paragraph 2 of this Court's July 29 Order.

4. The Amended Complaint does not differ materially from plaintiff's February 3, 1976 Verified Complaint (a copy of said February 3 verified complaint, hereinafter sometimes the "First Complaint", or "FC", is annexed hereto as Exhibit "C").

5. The First Complaint purported to assert a single derivative claim in favor of UGO. That single derivative claim was founded simultaneously in both the Securities Exchange Act of 1934 and in state law. This Court in its July 29 Order recognized that such method of pleading mandates that security be posted pursuant to Section 627 of the Business Corporation Law. Plaintiff's Amended Complaint clearly retains the singular properties of the First Complaint by failing to eliminate state law based claims. Plaintiff must, therefore, post the security required by decretal paragraph 3 of this Court's July 29 Order.

6. A comparative analysis of the Amended Complaint with the First Complaint shows that despite some cosmetic housekeeping changes in the Amended Complaint, plaintiff did not in his Amended Complaint eliminate state law based claims as mandated by paragraph 2 of this Court's July 29 Order:

First Complaint

A. Transactions Complained of: The First Complaint asserted a single claim. It referred expressly to pendent jurisdiction of this Court (FC, para 1), and went on to allege that the defendants conspired to enrich the corporate defendants Maritimecor and Maritime Fruit, and to damage UGO, by raising funds from the public and by various other transactions set forth in the First Complaint which plaintiff claims shifted those funds to defendants Maritimecor and Maritime Fruit. In the First Complaint the plaintiff claimed that such "transactions" were (i) the raising of funds by issuance of a prospectus in May, 1972 (not alleged however to be the "purchase or sale of securities" requried to state a claim under §10(b) of the Securities Exchange Act); (ii) the sale by UGO of contracts it had to purchase two vessels (FC para. 19); (iii) the issuance by UGO of UGO shares to Maritimecor (FC, para. 11; this "transaction allegedly being the §10(b) "purchase or sale of securities"; see FC, para. 21); (iv) the entry of a contract by UGO for construction of a vessel at an allegedly excessive price (FC, paras. 16-17); and, (v) the making of loans by UGO to Maritimecor (FC, para. 18).

B. Theories of Liability: While the First Complaint did not clearly specify which theories of liability applied

to which alleged transactions, it did on its face inter-mingle a §10(b) Securities Exchange Act claim and a state common law claim, which plaintiff asserted in the following manner: (i) the issuance of the prospectus and all of the other aforesaid transactions were claimed to violate the Securities Exchange Act of 1934 (FC, para. 19) in connection with a purchase or sale of securities, i.e. the 1975 agreement for the proposed sale of UGO stock to Maritimecor in exchange for Maritimecor assets (FC, para. 21); and, in addition, (ii) the proposed sale of UGO stock in exchange for assets and liabilities of Maritimecor, pursuant to the August 1975 agreement, was claimed to be a fraud, in that the Maritimecor assets were overvalued with a purpose to dissipate UGO assets, and it was claimed that defendants were negligent in failing to ascertain that the net value of the Maritimecor assets was less than the value of the UGO shares, that such transaction had no business purpose or benefit to UGO, that such transaction was not at arm's length, and that such transaction constituted self-dealing and pre-emption of corporate opportunity and a breach of fiduciary duty by the directors to UGO and its shareholders (FC, paras. 12-14). In his demand for relief in the First Complaint, plaintiff claimed violations of §10(b) of the Securities Exchange Act of 1934 and Rule §10(b)-5 adopted pursuant thereto, and separately, claimed breach of unspecified state common law fiduciary duties owed by defendants to the corporation and to its shareholders (FC, para. 25).

Amended Complaint

A. Transactions Complained of: The Amended Complaint makes housekeeping or cosmetic changes to the First Complaint, but still intermingles federal and state law theories of liability, in a single claim. The Amended Complaint alleges, again, that defendants conspired to enrich the corporate defendants Maritimecor and Maritime Fruit, and to damage UGO, by raising funds from the public and by various transactions thereinafter set forth, including the 1975 alleged transfer of UGO shares for Maritimecor assets (AC, para. 10). The Amended Complaint goes on to allege that such "transactions" were (i) again, the raising of funds from the public by issuance of a prospectus in May, 1972 (again, also, not alleged to be the "purchase or sale of securities" required to state a claim under §10(b) of the Securities Exchange Act), (ii) again, the sale by UGO of contracts it had to purchase two vessels (AC, para. 12), (iii) again, the making of loans by UGO to Maritimecor (AC, para. 13), (iv) again, but modified only slightly, the entry of a contract whereby UGO was to issue UGO shares to Maritimecor in exchange for assets and liabilities of Maritimecor (AC, para. 14) this being, as in the case of the First Complaint, the alleged "purchase or sale of securities" (AC, para. 21). In the Amended Complaint, allegations regarding UGO's entry into a contract for construction of a vessel at an excessive price are deleted.

B. Theories of Liability: The Amended Complaint, just like its predecessor, does not clearly specify which theories of liability apply to which alleged transactions. There is, however, once more an intermingling of a Securities Exchange Act claim and a state law based claim, as follows: (i) the issuance of the prospectus and all of the other aforesaid transactions are claimed to violate the Securities Exchange Act of 1934 (AC, para 19) in connection with the purchase or sale of securities, (i.e., the sale of the UGO stock to Maritimecor in exchange for the Maritimecor assets (AC, para. 21)), and, in addition, (ii) the proposed sale of UGO stock in exchange for assets and liabilities of Maritimecor, pursuant to the August, 1975 agreement is claimed to be a fraud, with a purpose to dissipate UGO assets, and it is claimed that defendants were negligent in failing to ascertain that the net value of the Maritimecor assets was less than the value of the UGO shares, that the transaction had no business purpose or benefit to UGO and was not at arm's length, and that the transaction constituted self-dealing and pre-emption of corporate opportunity and a breach of fiduciary duty by the directors to UGO and its shareholders. (AC paras. 16-18). The Amended Complaint therefore asserts the same theories of liability as did the First Complaint.

7. Even assuming that the Amended Complaint successfully states a §10(b) claim - and for the reasons set forth in the motion papers of other defendants accompanying this motion, defendant UGO does not believe that such a claim is stated - it is equally clear that plaintiff is attempting to achieve by the back door what he could not achieve by the front. Plaintiff's effort to retain a state common law claim in the Amended Complaint is made crystal clear at paragraph 18:

> "18. The aforesaid [agreement for exchange of UGO shares for Maritimecor assets] had no business purpose and was of no business benefit to UGO, and this fact was fully known to all defendants, was not an arms' length trarsaction, represented a sale of UGO common stock at less than its fair market value, represented self dealing, and constitutes an intentional, wanton and willful breach of defendants fiduciary duty to UGO and its minority stockholders."

Such allegations add nothing to the Securities Exchange Act theory of relief, separately stated at paragraphs 19 and 20 of the Amended Complaint. Such allegations are based in theories of liability under state common law. One can only conclude that plaintiff realizes full well that he has no Securities Exchange Act claim, and is attempting to bootstrap what may or may not be a claim under state law into a federal action by the device of alleging various acts (e.g., the issuance of a prospectus by UGO in 1972 and an agreement by UGO to exchange shares of its stock for liabilities and assets of Martimecor), which sound as if they relate to the federal securities laws, in order to bring before this Court a series of claims relating to alleged

mismanagement, negligence and breach of fiduciary duties which do not by themselves support an action under Section 10(b) of the Securities Exchange Act. Plaintiff has, therefore, once again pleaded a combined federal and state cause of action, so intertwined as to be inseparable, once again in a "shotgun" approach.

8. In sum, the Amended Complaint's mere deletion of references to pendent jurisdiction, and of the demand for relief under state law, were pleading niceties purely as a matter of form, which did not and could not meet the substantive requirements of this Court's July 29 Order. Accordingly, this Court should now set the amount of security for expenses to be posted by plaintiff, pursuant to paragraph 3 of said Order.

9. Turning to the amount of security requested, defendant UGO respectfully refers this Court to the affidavit of J. Portis Hicks sworn to June 1, 1976, submitted in support of plaintiff's original motion for security, at pages 9 to 13 inclusive. In summary, it is pointed out there that the parties in this action are located all over the world, that the divergent locations of the parties will add substantially to the financial burdens of this litigation on UGO, which must as well indemnify its directors against their expenses in this action, that undoubtedly extensive discovery will be conducted in this action in view of the serious nature of the claims made, and that substantial travel expenses can be anticipated. All of these factors are now aggra-

vated by the Amended Complaint, which adds 13 new party defendants, many of whom also reside outside of the United States. Accordingly, defendant UGO renews its request for security in the amount of $500,000. Defendant UGO's right to such security is clearly mandated by well-considered decisions of this Court, as is pointed out in UGO's memorandum of law of June 1, 1976, already on file with the Court.

10. For the foregoing reasons, and should this Court for any reason fail to grant the motion of certain defendants for dismissal of the Amended Complaint pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, defendant UGO respectfully requests that this Court require that plaintiff post security in an amount of $500,000, within 30 days of the Court's determination of this motion, and should plaintiff fail to post such security, that this action be dismissed.

J. Portis Hicks

J. PORTIS HICKS

Sworn to before me this
30th day of September, 1976

Laura Lacerenza

LAURA LACERENZA
Notary Public, State of
No. 52-
Qualified in Suffolk County
Certificate filed in
Commission Expires March 30, 1978

A 76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS AND OIL COMPANY, INC.,

Plaintiff,

- against -

YAACOV MERIDOR, et al.,

Defendants.

- x

AFFIDAVIT

76 Civ 555 (MJL)

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Morton J. Turchin, being duly sworn, deposes and says:

I am a partner in the firm of Turchin & Topper, attorneys for plaintiff Goldberg herein.

I make this affidavit in opposition to the motion by certain of the defendants to dismiss the amended complaint pursuant to Federal Rules of Civil Procedure, Rule 12(b)(2)(4)(5) and (6), on the grounds that the amended complaint does not state a claim upon which relief can be granted and for lack of personal jurisdiction, and in

opposition to the nominal defendant's motion for the posting of security for costs and counsel fees.

Defendants argue that deception and non-disclosure is a requirement for a 10b-5 case. While in our accompanying brief we feel we demonstrate the law imposes no such requirement in this case, nevertheless, insofar as plaintiff Goldberg, a minority shareholder is concerned, there has been no disclosure to him of the fraudulent nature of the transfer of Maritimecor assets and liabilities for stock of UGO. Copies of two public releases concerning this subject are annexed hereto as Exhibits "A" and "B". They say nothing of the following facts which we as attorneys have learned through our investigation indicating the unfairness and fraud involved in this transaction.

Maritimecor, as of the end of fiscal year 1974 had current liabilities of $42.5 million dollars, and in addition Maritimecor owed UGO about $7 million dollars which apparently was being forgiven in the transaction. The shareholders' net equity in Maritimecor was $40.4 million dollars or substantially less than its current liabilities. Further, included in the assets of Maritimecor are 2.8 million shares of UGO, the value of which are substantially decreased as a result of this transaction.

In addition, these press releases nowhere indicate the conflicts of interest of the principals involved in the transaction.

However, if the Court finds any defect in the manner of pleading we again ask for leave to replead.

As to the question of personal jurisdiction, annexed hereto as Exhibit "C" is a copy of the last page of the UGO 1974 annual report, dated according to the letter to the stockholders, June 19, 1975. This lists the officers and directors of UGO. Also a copy of the 10th page, designated as II-9, of Form S-1 filed with the SEC by Maritimecor is annexed as Exhibit "D". It shows defendant Sutton signing as Managing Director and that he held the position of Chief Executive Officer of Maritimecor.

From the shareholders' list provided by UGO as of July 13, 1976, there are 420 shareholders of UGO stock in the United States and they own 358,300 shares. In addition, and most importantly for this case, there are 114 shareholders in New York owning 231,126 shares of UGO stock and this includes 73,900 treasury shares owned by UGO, whose address listed on the shareholders' list is "122 East 42nd Street", in New York City. And the Manhattan telephone directory contains the listing for UGO at that address.

Defendant Erel raises the issue of the manner of service of the summons and complaint upon him. Annexed hereto as Exhibit "E" is a copy of the return of service we received from the United States Marshal's office. As shown, the service was made pursuant to the Hague Convention and it indicates that it was made in conformity with Israeli law. If defendant Erel presses this point we ask for a hearing at which time we will endeavor to obtain an expert on Israeli law to testify as to the validity of service.

For all the foregoing reasons it is requested that all the defendants' motions be denied in all respects.

Morton J. Turchin

Sworn to before me this
14th day of October, 1976.

PAULINE DEL GIUDICE
Notary Public, State of New York
No. 05-6127310
Qualified in Queens County
Commission Expires March 30, 1978

A 80

FROM: James N. Fingeroth
Kekst and Company
450 Park Avenue
New York, New York 10022
(212) 593-2655

David Meridor
Universal Gas & Oil Company Inc.
122 East 42 Street
New York, New York 10017
(212) 682-3305

FOR: Universal Gas and Oil Company Inc.
(NASDAQ-UGOLF)

FOR IMMEDIATE RELEASE

UNIVERSAL GAS AND OIL AGREES TO ACQUIRE ASSETS OF MARITIMECOR, S.A. AND ANNOUNCES CANCELLATION OF TWO OFFSHORE DRILL RIG CONTRACTS

New York, New York, August 1, 1975 -- Universal Gas and Oil Company Inc. ("UGO") today announced it has reached an agreement with its parent, Maritimecor, S.A. ("Maritimecor"), a wholly-owned subsidiary of Maritime Fruit Carriers Company Limited ("MFC"), pursuant to which UGO will issue 4,200,000 shares of its common stock to Maritimecor, in excharge for all the assets of Maritimecor, other than the 2,800,000 shares of UGO common stock Maritimecor already holds. UGO will also assume all of Maritimecor's liabilities.

Upon consummation of the transaction, the number of issued and outstanding UGO common shares will increase from 3,589,100 to 7,789,100. The number of these shares owned by Maritimecor will increase from 2,800,000 (78 percent) to 7,000,000 (90 percent). An additional 500,000 shares and 289,100 shares of UGO common stock are now held -- and will continue to be held -- by a subsidiary of Panmaritime Limited S.A., a Panama corporation which controls MFC, and the public, respectively. The public will also continue to hold $11 million principal amount of UGO's 8 percent Convertible Subordinated Debentures which are convertible into an additional 1,100,000 shares of UGO common stock.

...continued...

As a result of the transaction, UGO will replace Maritimecor as the principal operating subsidiary of MFC and, as such, will engage in a diversified line of shipping and shipping related activities including the sale of ships and ship-building contracts, the operation of reefers and tankers, and upon their delivery, product carriers and oil drilling rigs, and underwriting marine insurance.

UGO also announced today that it has cancelled, without penalty, contracts for the construction of two 275' bottom-to-bottom jack-up offshore drilling rigs scheduled for delivery in late 1977 from Bethlehem Steel Corporation's Beaumont Yard. These two rigs would have been a third and fourth following two duplicate units now on order with the Bethlehem Beaumont Yard for delivery late 1976 and early 1977.

UGO's common stock and 8 percent Convertible Subordinated Debentures are traded over-the-counter (NASDAQ-UGOLF and UGOLZ, respectively).

# # # #

EXHIBIT A

A 82

FROM: James N. Fingeroth
Kekst and Company
450 Park Avenue
New York, New York 10022
(212) 593-2655

David Meridor
Universal Gas & Oil Company Inc.
122 East 42nd Street
New York, New York 10017
(212) 682-3305

FOR: Universal Gas and Oil Company
(NASDAQ-UGOLF)

FOR IMMEDIATE RELEASE

UNIVERSAL GAS AND OIL COMPANY COMPLETES
ASSETS FOR STOCK EXCHANGE WITH ITS PARENT

New York, New York, December 19, 1975 -- Universal Gas and Oil Company Inc. announced today it has acquired substantially all of the assets of its parent, Maritimecor S.A., with the exception of 2.8 million shares of UGO common stock held by Maritimecor. UGO has also assumed all of Maritimecor's liabilities and obligations.

In exchange, Maritimecor will receive additional shares of UGO common stock. The number of shares will be determined by a formula based on the pro forma adjusted net worths of UGO and Maritimecor at December 31, 1975, attributing a ten percent premium to UGO's net worth (or at UGO's option, an alternative forumla recommended by outside investment bankers). In no event, however, will the number of UGO shares Maritimecor receives exceed the 4.2 million provided for when the agreement was previously announced on August 1, 1975.

Maritimecor is a wholly-owned subsidiary of Maritime Fruit Carriers Company Limited. As a result of the transactron announced today, UGO is now the principal operating subsidiary of MFC, engaging in a diversified line of shipping and related activities. These include the operation

...more

of a large fleet of refrigerated vessels and a smaller number of oil tankers, and the sale of ships and shipbuilding contracts.

UGO's common stock and 8 per cent Convertible Subordinated Debentures are traded over the counter (NASDAQ-UGOLF and UGOLZ, respectively).

# # #

EXHIBIT B

A 84

Officers and Directors:

Yaacov Meridor*
Co-Chairman of the Board of Directors

Captain Mila Brener*
Co-Chairman of the Board of Directors

David Meridor*
Vice President-Finance & Administration; Treasurer; Director

S. Erell*
Vice President-Shipping; Director

Gideon Ben Aaron*
Director; Secretary-Maritime Fruit Carriers Company Limited A diversified shipping company and parent of Maritimecor, S.A.

Ara A. Cambere
Director; Senior Vice President, Hornblower and Weeks-Hemphill, Noyes Investment Banking Firm

H. Struve Hensel
Director; Partner in the law firm of Coudert Brothers

Haim Rafaeli*
Director; Chairman of the Executive Committee; Principal Accounting Officer-Maritime Fruit Carriers Company Limited A diversified shipping company and parent of Maritimecor, S.A.

Martin Siem
Director; Chairman of the Board-Timex Corporation Manufacturer of Time Pieces and Instruments

Jacob Sutton*
Director; General Manager, Maritimecor, S.A. Parent of UGO

Henry A. Singer
Secretary; Partner in the law firm of Singer & Pincus

**Member of the Executive Committee which has certain powers of the Board of Directors*

General Counsel:
Singer & Pincus
New York, New York

Auditors:
Laventhol & Horwath
New York, New York

Registered Office:
c/o Icaza, Gonzalez-Ruiz & Aleman
Calle Aquiline de la Guardia No. 8
Panama, R de P

Principal Office:
Room 502, International Centre
P.O. Box 1343
Bermudiana Road
Hamilton 5 Bermuda

Representative Office:
122 East 42nd Street
New York, New York 10017

Transfer Agent:
Common Stock:
First National Bank of Boston
Boston, Mass.

Debentures:
American Bank & Trust Company
New York, New York

Additional Information:
Copies of the company's Form 20-K report to the Securities and Exchange Commission, including financial statements and schedules thereto, but without exhibits, are available, free of charge, upon request to the secretary of the company. A charge of $.25 per page will be made for any exhibits requested.

EXHIBIT C

POWER OF ATTORNEY TO SIGN AMENDMENTS

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Elie Housman, residing at 498 West End Avenue, New York, New York 10024, and Henry A. Singer, Esq., with offices at 110 East 59th Street, New York, New York 10022, and each of them, with full power to act without the other, as his true and lawful attorney-in-fact and agent, with full and several power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this Registration Statement, and to file the same, wi[illegible]xhibits thereto, and other documents in connection therewith, with the Securities and Exchange Co[illegible]ion, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as they or he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Maritimecor, S.A. has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Zurich, Switzerland, on the 27th day of June, 1974.

MARITIMECOR, S.A.

By JACOB SUTTON
(Jacob Sutton, Managing Director)

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
JACOB SUTTON (Jacob Sutton)	Managing Director and Chief Executive Officer	June 27, 1974
..... (Andre Mestell)	President and Director	June , 1974
..... (Jacobo Baum)	Vice President and Director	June , 1974
MAX LEBEDEIN (Max Lebedein)	Secretary and Director	June 25, 1974
RAYMOND CALIERE (Raymond Caliere)	Treasurer and Director	June 25, 1974
..... (Dev Ferrier)	Director	June , 1974
FRITZ KONIG (Fritz Konig)	Director	June 25, 1974
ZEV LEVIN (Zev Levin)	Director	June 25, 1974

EXHIBIT D

1-18/76 A 86

10. 2. 76= ט אדר תשלו-
חוק מספר

REQUEST

FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

DEMANDE

AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ÉTRANGER D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 Novembre 1965.

Identity and address of the applicant *Identité et adresse du requérant*	Address of receiving authority *Adresse de l'autorité destinataire*
United States Marshall's Service U.S. District Court Southern District of New York Foley Square New York, New York	The Director of Courts Directorate of Courts Russian Compound Jerusalem, Israel

The undersigned applicant has the honour to transmit—in duplicate—the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.,
(identity and address)

Le requérant soussigné a l'honneur de faire parvenir—en double exemplaire—a l'autorité destinataire les documents ci-dessous énumérés, en la priant conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, savoir:
(identité et adresse) ~~SHLOMO EREL~~
~~53 Shderot Hameginim - Haifa, Israel~~

☐ **(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.***
a) selon les formes légales (article 5, alinéa premier, lettre a).

☐ **(b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)*:**
b) selon la forme particulière suivante (article 5, alinéa premier, lettre b) : ~~BY PERSONAL DELIVERY~~

☐ **(c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*.**
c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the documents—and of the annexes*—with a certificate as provided on the reverse side.
Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte—et de ses annexes —avec l'attestation figurant au verso.

List of documents
Enumération des pièces

~~Summons~~
~~Complaint~~

Done at New York, New York **the**
Fait à _____, *le* _____

Signature and/or stamp.
Signature et/ou cachet.

[signature]

FORM LAA-114
1-21-74

*Delete if inappropriate.
Rayer les mentions inutiles.

1

EXHIBIT E

CERTIFICATE
ATTESTATION

87

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

1) that the document has been served *
1. que la demande a été exécutée

—**the (date)**
—*le (date)* March 3, 1976

—**at (place, street, number)**
—*à (localité, rue numéro)* Above address

—**in one of the following methods authorised by article 5**—
—*dans une des formes suivantes prévues à l'article 5:*

☐ **(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention***.
a) selon les formes légales (article 5, alinéa premier, lettre a).

☐ **(b) in accordance with the following particular method***:
b) selon la forme particulière suivante : as the addressee was abroad the documents were handed to a clerk who refused to sign the attached certificate.

☐ **(c) by delivery to the addressee, who accepted it voluntarily.***
c) par remise simple .

The documents referred to in the request have been delivered to: Mrs. Aviva
Les documents mentionnés dans la demande ont été remis à:

—**(identity and description of person)**
—*(identité et qualité de la personne)*

—**relationship to the addressee (family, business or other):**
—*liens de parenté, de subordination ou autres, avec le destinataire de l'acte:* Employee

2) that the document has not been served, by reason of the following facts*:
2. que la demande n'a pas été exécutée, en raison des faits suivants :

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*
Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.

Annexes
Annexes
Documents returned:
Pièces renvoyées:

In appropriate cases, documents establishing the service:
Le cas échéant, les documents justificatifs de l'exécution:

Done at JERUSALEM
Fait à , **le** 21 MAR 1976

Signature and/or stamp.
Signature et/ou cachet.

DIRECTOR OF COURTS

* Delete if inappropriate.
Rayer les mentions inutiles.

A 88

תקנות העזרה המשפטית למדינות זרות
תש"ך — 1959

LEGAL ASSISTANCE TO FOREIGN STATES REGULATIONS, 5720—1959

תעודה לפי תקנה 8

CERTIFICATE UNDER REGULATION 8

זאת לתעודה כי בית משפט זה ביצע את הבקשה להמצאת מסמך של בית־הדין הנכרי ב ארה"ב שהועברה אליו על ידי מנהל בתי המשפט ביום 3376 והמסמך נמסר לתעודתו ביום 9.3.76

This is to certify and attest that this Court has complied with the request for service of process of the foreign court at United States which was transmitted to this court by the Director of Courts on 3376. Service of the process was effected on 9376. A copy of the process and the proofs of the service thereof are annexed to this certificate.

טופס המסמך וכן הוכחות ההמצאה מצורפים לתעודה זו.

ניתן על ידי היום 25.3.76

Date 25.3.76

PRESIDENT/JUDGE/REGISTRAR

נשיא/שופט/רשם

משרד המשפטים ירושלים

מדינת ישראל

בתי המשפט

לתלוש כאן

הנהלת בתי המשפט

בית משפט ה _____ ב _____

לשכת ההוצאה לפועל ב _____

אל [illegible]

המען [illegible] 53 [illegible]

תיק 1-12/76

בפני כב' השופט .....

הכתב .....

נקבע ליום ...../...../.....

המזכיר .....

אני ..... מצהיר בזה שבתאריך ..... באתי למען של הנ"ל:

שם הדוור

☐ ומסרתי את ההזמנה לידיו.

☐ ומסרתי את ההזמנה ל ..... שהוא/היא

השם המלא

בן/בת משפחתו/ה הגר/ה עמו/ה והנראה/ית שמלאו לו ה 18 שנה.

אם לא מסרת ציין את הסיבה במשבצת המתאימה:

☐ איש לא נמצא בבית. השארתי הודעה ד.ט. 297

☐ העתיק את מקום מגוריו לכתובת בלתי ידועה

☐ הכתובת לא נכונה ☐ לא נדרש

☐ עזב את הארץ ☐ סרב לקבל

סיבה אחרת .....

חתימת הדואר

חתימת המקבל

חתימת הדוור (המוסר)

הרוסם רושיא

68

טופס 401

A 90

לאחר שקיימר לי שהמעון בעת לא בארץ מסרתי
את המעטפה המצורפת לפקידת הדואר במשרד החקר ה
הימית להוצאת פתי בקורתות עוד עובדים ושרבו לתתובן

6.7.01 [illegible]

A 91

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

DAVID GOLDBERG, suing derivately in the right and for the benefit of UNIVERSAL GAS AND OIL COMPANY INC.,

Plaintiff,

-against-

YAACOV MERIDOR, et al.,

Defendants.

----------X

76 CIV. 555 (ML)

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PAUL A. FEIGENBAUM, being duly sworn, deposes and says:

1. I am an attorney associated with Marshall, Bratter, Greene, Allison & Tucker, attorneys for defendants David Meridor, Shlomo Erell, Gideon Ben Aaron, Haim Rafaeli, Jacob Sutton, Maritimecor, S.A. and Maritime Fruit Carriers Company, Ltd. I am fully familiar with the prior proceedings in the above-entitled action and submit this affidavit in support of the motion by nominal corporate defendant Universal Gas and Oil Company, Inc. ("UGO") for an order setting the amount of security to be posted by plaintiff as security for UGO's expenses and costs to be incurred in this action, including reasonable attorneys' fees, and granting dismissal of this action should plaintiff fail to post such security.

2. There is currently returnable before this Court on October 19, 1976 a motion by the above-named defendants to dismiss

the Amended Complaint in this action for failure to state a claim for relief, or in the event the Complaint is not dismissed on those grounds, to dismiss the Complaint as against defendants Brell, Ben Aaron, Micelli and Sutton for lack of personal jurisdiction. It is submitted that the defendants mentioned above in paragraph 1 are entitled to the relief sought by that motion, but in the event the Court finds that the Amended Complaint should not be dismissed for failure to state a claim for relief, it is further submitted that UGO's motion for security and dismissal in the event of plaintiff's failure to post same should be granted for all of the reasons set forth in the affidavit of J. Portis Hicks, Esq., submitted in support of UGO's security motion, and in the papers submitted in support of UGO's original security motion, insofar as they are incorporated into the instant motion.

3. The granting of UGO's motion for security is especially appropriate with respect to the individual defendants represented by our firm, all of whom were officers or directors of UGO and, consequently, who are entitled to indemnification for their reasonable expenses, including attorneys fees, incurred in this litigation. That indemnification right arises from UGO's Certificate of Incorporation and By-Laws, annexed to the Hicks Affidavit, and from New York Business Corporation Law, Section 721. The broad reach of the claim being asserted by plaintiff and the large number of defendants suggest extensive discovery will be needed in this action. The cost of this discovery will be further increased by the foreign residences of the above-named individual defendants. It is therefore especially appropriate that security, as requested by plaintiff as re-posted by UGO to protect these defendants.

WHEREFORE, deponent respectfully requests that, in the event

of the denial of the above-mentioned motion to dismiss the Amended Complaint for failure to state a claim for relief, UGO's motion for security or, in the alternative, dismissal be granted in all respects.

Paul A. Feigenbaum

Sworn to before me this
[illegible]day of October, 1976.

Notary Public

[illegible]

A 94

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.	:	76 Civ. 55 (ML)
Plaintiff,	:	
-against-	:	NOTICE OF MOTION
YAACOV MERIDOR, et al.,	:	
Defendants,	:	
-and-	:	
UNIVERSAL GAS & OIL COMPANY, INC.,	:	
Nominal Defendants.	:	

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of defendant Henry A. Singer, upon the Amended Complaint served by plaintiff, and upon all prior proceedings had herein, defendant Henry A. Singer will move (and join defendants Maritime Fruit Carriers Company Limited, Maritmecor, S.A., David Meridor, Gideon Ben Aaron, Shlomo Erell, Haim Rafaeli and Jacob Sutton in moving) this Court at Room 1903, United States Courthouse, Foley Square, New York, New York, before the Hon. Morris Lasker, one of the Judges of the within named Court on the 19th day of October, 1976, at 10:00 A.M. or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 12(b)(6) of the

Federal Rules of Civil Procedure, dismissing said Amended Complaint upon the grounds that the Amended Complaint, which purports to state a claim under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. Section 78j (b), and Rule 10b-5, 17 C.F.R. Section 240.10b-5, promulgated thereunder, and which purports to invoke jurisdiction of this Court based upon Section 27 of the Exchange Act, 15 U.S.C. Section 78aa and the provisions of 28 U.S.C. Section 1337, fails to state a claim upon which relief can be granted; and for such other and further relief as to the court deems just and proper.

Dated: New York, New York
October 8, 1976

Yours, etc.,

SINGER HUTNER LEVINE & SEEMAN

BY _____
A Member of the Firm
Attorneys for Defendant
Henry A. Singer
110 East 59th Street
New York, New York 10022

TO: TURCHIN & TOPPER
Attorneys for Plaintiff
60 East 42nd Street
New York, New York 10017

MARSHALL, BRATTER, GREENE,
ALLISON & TUCKER
Attorneys for Defendants
Maritime Fruit Carriers
Company Limited, Maritimecor,
S.A., David Meridor, Shlomo
Erell, Gideon Ben Aaron, Haim
Rafaeli and Jacob Sutton
430 Park Avenue
New York, New York 10022

A 96

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.,

Plaintiff,

-against-

YAACOV MERIDOR, et al.,

Defendants,

-and-

UNIVERSAL GAS & OIL COMPANY, INC.,

Nominal Defendants.

76 Civ. 55 (ML)

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HENRY A. SINGER, being duly sworn, deposes and says:

1. I am one of the indiviudals named as a defendant in the above action. I submit this affidavit in support of my motion for dismissal of plaintiff's Amended Verified Complaint ("Amended Complaint"), in accordance with the provisions of Rule 12 (b)(6) of the Federal Rules of Civil Procedure, on the ground that the Amended Complaint, which purports to state a claim under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. Section 78j (b) and Rule 10b-5 promulgated thereunder by the Securities Exchange Commission, 17 C.F.R.

Section 240.10b-5, and which purports to invoke jurisdiction of this court based upon Section 27 of the Exchange Act, 15 U.S.C. Section 78aa and the provisions of 28 U.S.C. Section 1337, fails to state a claim upon which relief can be granted.

2. In so moving, I join with defendants Maritime Fruit Carriers Company, Limited, Maritimecor, S.A., David Meridor, Gideon Ben Aaron, Shlomo Erell, Haim Rafaeli and Jacob Sutton, who have also moved for dismissal of the Amended Complaint by notice of motion dated October 1, 1976, on the ground inter alia that the Amended Complaint fails to state a claim upon which relief can be granted. I move for dismissal on such ground for the same reasons as do those defendants, and I concur with the position of those defendants as set forth in the affidavit of Paul A. Feigenbaum, Esq. sworn to October 1, 1976 and in the memorandum of law dated October 1, 1976 in support of those defendants' dismissal motion (pages 3-21).

WHEREFORE, it is respectfully requested that this motion be granted in all respects, and that the Amended Complaint accordingly be dismissed.

HENRY A. SINGER

Sworn to before me this
11th day of October, 1976.

Notary Public

ELI R. MATTIOLI
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-4604984
Qualified in Queens County
Term Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC., 75 Civ. 555 (ML)

Plaintiff,

-against-

AFFIDAVIT

YAACOV MERIDOR, et al.,

Defendants,

-and-

UNIVERSAL GAS & OIL COMPANY, INC.,

Nominal Defendant.

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

WILLIAM RAND, being duly sworn, deposes and says:

1. I am a partner in the firm of Coudert Brothers, attorneys for defendant H. Struve Hensel, and I make this affidavit as a means by which said defendant joins in that part of the motion of defendant Maritime Fruit Carriers Company, Ltd. brought on by Notice of Motion dated October 1, 1976, as seeks a dismissal of the amended complaint on the ground that it fails to state a claim upon which relief can be granted.

2. With respect to the 1972 Public Offering there can be no derivative suit under the Federal Securities laws on behalf of the nominal defendant Universal Gas & Oil Company, Inc. ("UGO") because UGO was the offering company which received the cash benefit from the sale of its stock, and because plaintiff was not yet a stockholder. With respect to the 1975 sale by UGO of its stock to Maritimecor there can be no derivative cause of

action under the Federal Securities laws because UGO, the corporation selling the securities, had full knowledge of all the facts and was not the victim of any deception or other fraudulent device. In support of this position defendant Hensel adopts the arguments set forth in Point I of the Memorandum of Law filed with respect to this motion by Marshall, Bratter, Greene, Allison & Tucker.

WILLIAM RAND

Sworn to before me this
18th day of October, 1976.

Notary Public

ANN BUSHONG
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS AND OIL COMPANY, INC.,	:	SUPPLEMENTAL AFFIDAVIT ON BEHALF OF PLAINTIFF GOLDBERG
Plaintiff,	:	
- against -	:	76 CIV 555 (ML)
YAACOV MERIDOR, et al,	:	
Defendants.	:	

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Morton J. Turchin, being duly sworn deposes and says:

This affidavit is submitted on behalf of plaintiff Goldberg and in opposition to the motions to dismiss. It is addressed to the issue of damage to UGO as a result of the transfer of Maritimecor assets and liabilities to UGO for stock of UGO.

At the end of 1974 UGO had current assets of about 41 million dollars and current liabilities of 2 million dollars. Certainly this indicates a strong financial posture. However, after the transfer, Maritimecor's current net liabilities of 42.5 million dollars caused UGO

to wind up with a deficit of about 3.6 million dollars of current liabilities. Also, shareholders' net equity in Maritimecor prior to the transfer was about 2 million dollars less than its current liabilities. This hardly made it attractive to UGO for the purchase of its assets and liabilities.

In addition, there are 7 million dollars owed by Maritimecor to UGO which apparently is foregiven as part of the transaction.

As a result of the transaction and the precarious financial position UGO was put in, UGO, as indicated in numerous newspaper accounts, has defaulted on its financial obligations and its ships are being seized by creditors to pay debts. Copies of three such articles from the Wall Street Journal, during the summer of 1976 are annexed as Exhibits A, B, and C, respectively. This we submit is ample damage to UGO caused by defendants.

It is therefore submitted that based on the foregoing and for the reasons set forth in the main brief and principal affidavit, all defendants' motions should be denied.

Morton J. Turchin

Sworn to before me this
18th day of October, 1976

Pauline Del Giudice

PAULINE DEL GIUDICE
Notary Public, State of New York
No. 03-6127210
Qualified in Queens County
Commission Expires March 30, 1978

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Maritime Fruit Unit Fails to Pay Interest On $11 Million of Debt

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—A Maritime Fruit Carriers Co subsidiary was unable to make a $440,000 interest payment that was due yesterday on its $11 million of 8% convertible debentures due 1987

But a Maritime Fruit spokesman said there is a 30-day grace period on the debentures of Universal Gas & Oil Co., a Bermuda-based subsidiary Universal Gas holds steamship-company assets and isn't engaged in oil or gas production

Maritime Fruit, a steamship company headquartered in Haifa, Israel, has been in default on part of its debt since February, when new management was installed in an effort to untangle its affairs

Maritime Fruit has a $12 million, 6½% convertible debenture issue outstanding due 1986 The next interest payment on it is due Sept. 15, the spokesman said

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EXHIBIT "A"

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Maritime Fruit Says Source Might Invest $15 Million in Firm

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Maritime Fruit Carriers Co. said a source is considering a $15 million investment in the ailing steamship company within the next two weeks.

The company said it's trying to provide the "London shipping lawyer acting on behalf of an undisclosed client" with Maritime Fruit financial data on which such an investment could be based.

H. Struve Hensel, president of Maritime Fruit since a new management group assumed control in February, said the injection of funds would be used to pay creditors and other obligations. He emphasized there wasn't any assurance Maritime Fruit would receive the funds. And if they came, "control" of Maritime and "some security" for the investor would be "necessary."

Maritime Fruit is based in Haifa, Israel, but has key offices in London and New York. It said in February that it was in default on about $23.5 million of its debt. Since then it has sold two ocean vessels and three others have been seized by creditors.

Mr. Hensel said that "negotiations were under way for the sale of some additional vessels, the rearrangement of agreements with respect to others and the sale of certain nonshipping subsidiaries in an effort to provide the company with greater flexibility in reducing its outstanding obligations . . ."

Maritime Fruit also said yesterday that its Bermuda-based steamship subsidiary, Universal Gas & Oil Co., can't meet a $440,000 interest payment June 15 on its $11 million debentures outstanding. It said Universal Gas can't make the payment "because of restrictions which took effect upon the nonpayment of other outstanding indebtedness of UGO."

But it added that the "payment could be made by Maritime Fruit to avoid default."

Universal Gas, despite its name, isn't engaged in oil or gas production.

Atlas Consolidated Resumes Development Of Philippine Mine

...NAL Staff Reporter

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EXHIBIT "B"

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Maritime Fruit Rejects Offer of $100 Million For 16 Cargo Ships

By a WALL STREET JOURNAL Staff Reporter

LONDON – Maritime Fruit Carriers Co rejected a $100 million offer for 16 of its 37 refrigerated cargo ships leaving the financially troubled group's future in continued doubt.

The offer had been made earlier this month by Trafalgar House Investments Ltd. a Cunard Line, which announced the rejection. Victor Matthews, chairman of Cunard and managing director of Trafalgar House, said the offer was withdrawn after the two sides failed to reach "a satisfactory basis for detailed negotiations."

For their part, officials of Maritime Fruit maintained the public silence they began when they started negotiations with their creditors in London several weeks ago. The company has been talking with various groups of potential lenders with a view to staving off liquidation.

In the meantime, creditors have been seizing Maritime Fruit ships around the world as collateral for their loans. Some creditors estimate the company's current debt at $380 million, of which about $210 million is due to banks.

Late Friday, a unit of New York's Marine Midland Bank said it sold two of the six British-registered ships it had seized. The ships were sold "as is, where is," on the high seas, said an official of the subsidiary, International Marine Banking Co.

The official declined to disclose the price paid but said the buyers were both British. One ship, the Lapland, was sold to the British unit of Salen Reefer Services AB, a Swedish concern that had contracted for most of Maritime Fruit's ships until Maritime's troubles prompted Salen to break the contract. The other ship, the Newcastle, was sold to Britain's privately owned Blue Star Line.

Cunard's offer was supported by Britain's merchant seamen's union, which wants to preserve its members' jobs on the 16 British flag vessels that Maritime Fruit owns. It threatened "all necessary action" to prevent the ships from being sold and registered under another flag. It also noted Maritime Fruit owes its members back pay and other overdue benefits totaling about $645,000.

Chart House Sales and Earnings

LAFAYETTE, La. – Chart House Inc. expects to report that second quarter earnings [illegible] million, or 45 cents a share, from

EXHIBIT "C"

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Paula Del Giudice, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides in Queens, New York

On the 19th day of October, 1976, deponent served the within Supplemental Affidavit on Behalf of Plaintiff Goldberg upon the following attorneys in this action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

Singer, Hutner, Levine & Seeman
Attorneys for Defendant Singer
110 East 59th Street
New York, New York 10022

Marshall, Bratter, Greene,
Allison & Tucker
Attorneys for Defendants
Maritime Fruit Carriers Company, Ltd.
Maritimecor, S.A.
David Meridor,
Shlomo Erell, Gideon Ben Aaron,
Haim Rafaeli and Jacob Sutton
430 Park Avenue
New York, New York 10022

Wender, Murase & White
Attorneys for Nominal Defendant
Universal Gas and Oil Company, Inc.
400 Park Avenue
New York, New York 10022

A 106

Mudge, Rose, Guthrie & Alexander
Attorneys for Defendants
Ara A. Cambere and
Hornblower & Weeks, Hemphill Noyes, Inc.
20 Broad Street
New York, New York 10005

Willkie, Farr & Gallagher
Attorneys for Defendants Yaacov
Meridor and Mila Brenner
One Chase Manhattan Plaza
New York, New York 10005

Coudert Brothers
Attorneys for Defendant
H. Struve Hensel
200 Park Avenue
New York, New York 10017

Townley, Updike, Carter & Rogers
Attorneys for Defendant Martin Siem
220 East 42nd Street
New York, New York 10017

Howrey & Simon
Attorneys for Defendant Martin Siem
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Washington, D. C . 20006

Paul, Weiss, Rifkin, Wharton & Garrison
Attorneys for certain defendants
345 Park Avenue
New York, New York 10022

D'Amato, Costello & Shea
Attorneys for certain defendants
116 John Street
New York, New York

Paula Del Giudice

Sworn to before me this
19th day of October, 1976

MORTON B. TURCHIN
Notary Public, State of New York
No. 24 4085068
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.,

Plaintiff,

-against-

YAACOV MERIDOR, et al.,

Defendants,

-and-

UNIVERSAL GAS & OIL COMPANY, INC.,

Nominal Defendant.
----------X

76 Civ. 555

MEMORANDUM

APPEARANCES:

TURCHIN & TOPPER, ESQS.
60 East 42nd Street
New York, New York 10017
Attorneys for Plaintiff

MARSHALL, BRATTER, GREENE, ALLISON & TUCKER, ESQS.
430 Park Avenue
New York, New York 10022
Attorneys for Defendants Maritime Fruit Carriers Company Limited, Maritimecor, S.A., David Meridor, Shlomo Erell, Gideon Ben Aaron, Haim Rafaeli and Jacob Sutton

WENDER, MURASE & WHITE, ESQS.
400 Park Avenue
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New York, New York 10022
Attorneys for Defendant Henry A. Singer

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20 Broad Street
New York, New York 10005
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New York, New York 10005
Attorneys for Defendants Yaacov Meridor and Mila Brenner

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Attorneys for Defendant H. Struve Hensel

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New York, New York 10017
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Washington, D. C. 20006
Attorneys for Defendant Martin Siem

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS.
345 Park Avenue
New York, New York 10022

LASKER, D.J.

David Goldberg sues derivatively on behalf of Universal Gas & Oil Co., Inc. (UGO), charging UGO's officers and directors and its two parent corporations with corporate mismanagement and breach of fiduciary duty. Specifically, Goldberg challenges a transaction between UGO and Maritimecor, S.A., whereby UGO issued 4,200,000 shares of its stock to Maritimecor in return for all of the latter's assets and liabilities. Prior to the transaction Maritimecor owned 78% of UGO, and was in turn wholly owned by the defendant Maritime Fruit Carriers Co., Ltd. (MFCC). Goldberg alleges that the terms of this transaction were grossly "unfair" to the minority shareholders of UGO and that the transaction itself constituted a violation of §10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and Rule 10b-5, 40 C.F.R. 240.10b-5. 1/

According to the Amended Verified Complaint, the defendants conspired to enrich Maritimecor and MFCC at the expense of UGO. The plan was effected by raising funds from the public and using the proceeds for the benefit of the two corporate defendants. (¶10) (Numbers in parentheses refer to the paragraphs of the Amended Verified Complaint) In furtherance of this scheme the following events took place:

1) In May, 1972 UGO sold stock and debentures in a public offering for the stated purpose of raising

funds to finance the construction and purchase of three ships to transport liquified gas; (¶11)

2) In 1974 two of the ship construction contracts were sold for a $14 million profit; (¶12)

3) In 1974 and 1975 the defendants caused loans to be made by UGO to Maritimecor so that by August, 1975 Maritimecor owed UGO $7 million; (¶13)

4) In August, 1975 UGO agreed to issue 4,200,000 shares of its stock to Maritimecor in exchange for all of the latters' assets (excluding 2,800,000 shares of UGO already held by Maritimecor) and liabilities. (¶14)

The purchase of Maritimecor's assets and liabilities, which Goldberg believes has been effected, (¶15), was "fraudulent and unfair" in that the net value of Maritimecor's assets was far less than the value of the UGO shares exchanged, and "the purpose and intent of said transaction was to cause the dissipation of the substantial assets of UGO for benefit of the defendants Maritimecor and [MFCC]." (¶16) The defendants were fully aware that the transaction had no business purpose, had no benefit for UGO, was not an arm's length transaction and represented self-dealing and breach of fiduciary duty. (¶18)

Although these allegations clearly constitute a valid state law claim, their sufficiency in federal law is open to serious question. Conspicuously absent is any

allegation of deceit, misrepresentation or falsehood with regard to the events which transpired. Urging that the lack of any claimed deception is fatal to a cause of action under Rule 10b-5, many of the defendants move to dismiss for failure to state a claim. Fed. R. Civ. P. 12(b)(6).[2/]

Until fairly recently there was little room for doubt that the defendants' position is correct. The element of deception has always been a central component of a 10b-5 violation. See, e.g., O'Neill v. Maytag, 339 F.2d 764 (2d Cir. 1964). Although decisions like Drachman v. Harvey, 453 F.2d 722 (2d Cir. 1972) (en banc) and Schoenbaum v. Firstbrook, 405 F.2d 215 (2d Cir. 1968) (en banc), cert. denied, 395 U.S. 906 (1969) significantly expanded the scope of the Rule, finding claims to be stated where the essence of the allegations involved corporate self-dealing in relation to securities transactions, the element of deceit remained present, albeit somewhat less central to the challenged behavior. In Popkin v. Bishop, 464 F.2d 714 (2d Cir. 1972), the court reaffirmed that deception is an indispensible element of a 10b-5 claim. The Popkin court analyzed the more expansive prior decisions and concluded that their focus on improper self-dealing "did not eliminate non-disclosure as a key issue in Rule 10b-5 cases." 464 F.2d at 719.

Goldberg argues that all of this has been changed by two recent landmark decisions in this Circuit. In

Marshel v. AFW Fabric Corp., 533 F.2d 1277 (2d Cir.), vacated and remanded for consideration of mootness, 45 U.S.L.W. 3279 (Oct. 12, 1976) and Green v. Santa Fe Industries, Inc., 533 F.2d 1283 (2d Cir.), cert. granted, 45 U.S.L.W. 3249 (Oct. 4, 1976), the court held that it is not necessary to plead or prove deception in the context of a challenge under Rule 10b-5 to a merger effectuated for the purpose of "going private." Goldberg contends that this case is governed by Marshel and Green because here, as in those cases, "the transaction itself is attacked as a fraud on UGO." (Memorandum in Opposition at 7) The defendants argue that Popkin controls. We agree.

Popkin was a derivative action brought by a shareholder in Bell Intercontinental Corp. to enjoin a proposed merger of Bell and two of its subsidiaries into the Equity Corporation, which was the controlling entity of the other three corporations. The plaintiff alleged that the terms of the deal were grossly inadequate to the shareholders of Bell and that the officers and directors of the corporation breached a variety of fiduciary duties in advocating the transaction. Nevertheless, despite its recognition that Drachman and Schoenbaum had significantly extended the reach of 10b-5 to include claims of corporate mismanagement and self-dealing in connection with securi-

ties transactions, the court upheld the lower court's dismissal of the complaint for failure to state a claim. The fatal defect was the absence of an "allegation or hint of any misrepresentation by defendants or failure on their part to disclose any material fact in connection with the merger proposal." 464 F.2d at 718.

Marshel was a derivative suit brought by minority shareholders in Concord Fabrics Inc., who sought to enjoin a merger between Concord and AFW Fabrics Corp., an entity created and wholly owned by the majority shareholders of Concord for the sole and express purpose of "going private." The merger was to be effectuated under the New York corporation law which requires approval by shareholder vote, but the result was a foregone conclusion because the majority interests held enough shares to determine the outcome. The plaintiffs conceded that the terms, purpose and effect of the proposed merger had been fully disclosed. The court, however, viewed the merger as a

> "scheme by [the majority], having previously taken advantage of public financing, to appropriate for their personal benefit the entire stock ownership of Concord at a price determined by them and paid out of the corporate treasury at a cost of over $1,600,000." 533 F.2d at 1280.

Such a scheme was held to be within the proscription of 10b-5. The court framed its holding carefully and narrowly:

> "We hold that when controlling stockholders and directors of a publicly-held corporation cause it to expend corporate funds to force elimination of minority stockholders' equity participation for reasons not benefiting the corporation but rather serving only the interests of the controlling stockholders such conduct will be enjoined pursuant to Section 10(b) and Rule 10b-5 which prohibits 'any act, practice, or course of business which operates or would operate as a fraud ... in connection with the purchase or sale of any security.'" 533 F.2d at 1281

Green reached the same conclusion where the challenged transaction was a Delaware short-form merger under which no prior notice to or approval by the shareholders was required. Like Marshel the opinion is spiced with language expressing the fundamental unfairness and artifice of a "going private" merger and held only that "a complaint alleges a claim under Rule 10b-5 when it charges in connection with a Delaware short-form merger, that the majority has committed a breach of its fiduciary duty to deal fairly with minority shareholders by effecting the merger without any justifiable business purpose." 533 F.2d at 1291.

It is, as Judge Smith noted in his concurrence in Marshel, somewhat difficult to reconcile the holdings of these two cases, and particularly Marshel, with Popkin. Nevertheless, neither decision purported to overrule Popkin

and in fact, both asserted that it supports their holdings. The court in Green distinguished Popkin primarily on the ground that in the latter shareholder approval was required to effectuate the challenged merger. Therefore a requirement of full disclosure would presumably suffice to protect the interests of minority owners. In contrast, since the Delaware short-form merger under attack in Green did not require prior notification, lack of disclosure or misrepresentation was unnecessary to the claim. 533 F.2d at 1289-90. This distinction, however, is not entirely satisfactory, particularly since the merger in Marshel was one which required shareholder approval. If the distinction suggested in Green were dispositive, Marshel would have gone the other way.

Goldberg argues that the line between those cases governed by Green and Marshel on the one hand, in which no allegation of deception is required, and those governed by Popkin on the other, should be drawn between those cases in which the challenged transaction is attacked as inherently fraudulent and those in which it is not. In support of this interpretation he seizes on the passage in Marshel in which the court, contrasting the facts of Popkin, noted that in the earlier case, "The propriety of the merger itself was not challenged." 533 F.2d at 1282. Because he claims to be challenging the transaction

between UCO and Maritimecor as a fraud on UGO's minority shareholders, he argues that he falls within the ambit of the Marshel holding. This, however, is unduly simplistic. It reduces the distinction between the cases to semantics, and renders Popkin and a long line of prior decisions virtually meaningless, subject to circumvention by any plaintiff with counsel sufficiently artful to word the complaint so as to avoid any reference to such things as an unfair exchange ratio and substitute phrases like "inherently fraudulent scheme." We think the Marshel court must have meant more than this. Indeed, this conclusion is supported by the court's statement elaborating on the contrast between the facts in Popkin and the facts before it, that, "In the present case the 'merger' itself constitutes a fraudulent scheme because it represents an attempt by the majority stockholders to utilize corporate funds for strictly personal benefit." 533 F.2d at 1282 (emphasis added). The reference here to "strictly personal benefit" seems peculiarly directed to the "going private" context, in which the gains sought by defendants are particularly and exclusively individual in nature.

We conclude, along with the Court of Appeals for the Sixth Circuit, that Green and Marshel deal with a subject sui generis and "cannot be read apart from the milieu of 'going private' merger transactions." Marsh v.

petition for cert. filed, No. 76-5, 45 U.S.L.W. 3103 (July 6, 1976).

Armada Corp., 533 F.2d 978, 985,/ There is something inherently suspect in the decision of a small group of individuals when, after cashing in on the "going public craze" they then move for their own financial advantage to eliminate public investors from participation in ownership, and do so with corporate funds. It suggests as analogy the car thief who makes the owner pay for the gas to drive the car away. In Green Judge Medina put it that:

> "When controlling shareholders of a publicly held corporation use corporate funds to force extinction of the minority shareholders' interest for the sole purpose of feeding the pocketbooks of the controlling shareholders, such conduct goes beyond mere negligent mismanagement and is properly cognizable as 'an act, practice, or course of conduct which operates or would operate as a fraud ..." 533 F.2d at 1290.

This sentiment appears throughout both opinions and must be considered to lie at the heart of their holdings. Although the issue is not free of difficulty, nevertheless we conclude that the cases should be limited to their facts, and so long as Popkin remains good law the element of deception should be understood as a requirement of a 10b-5 claim with the sole exception of actions challenging a "going private" merger.[3/]

Goldberg has indicated a desire to replead and allege deception of the minority shareholders in the event

that the motion to dismiss is granted. While such a course is frequently appropriate, in the circumstances of this case we decline to permit it.

There have already been two complaints. (See notes 1 and 2) Both are prime examples of an attempt to fit the square peg of a state law claim into the round hole of a 10b-5 allegation. When the original complaint was dismissed for failure to post security or obtain the requisite support from other minority shareholders, Goldberg was made exquisitely aware of the need to limit this amended pleading to a federal claim, unless he could post security under state law, which he could not. Although he now contends that he could allege that he was deceived by the defendants with regard to the terms of the transaction with Maritimecor, he chose to frame the amended complaint in such a way as to exclude this element altogether. There is a limit to the time and energy a federal court should accord to marginal federal causes of actionwhich are fully capable of being vindicated in state court. Presumably, if the element of deceit formed any significant aspect of Goldberg's claim, or was responsible for the alleged injury to UGO, Goldberg could have been expected to have plead such facts before the third go-round.

For the foregoing reasons, the motion to dismiss

is granted.

It is so ordered.

Dated: New York, New York
February 10, 1977.

MORRIS E. LASKER

U.S.D.J.

FOOTNOTES

1. In the original Verified Complaint Goldberg alleged as well that the defendants' conduct constituted a breach of fiduciary duty under state law. The defendants moved for an order directing Goldberg to post security for expenses and costs as required under Section 627 of the New York Business Corporation Law. The motion was granted and on July 29, 1976 an order was entered directing, inter alia, that Goldberg would either post security, rally support from other UGO shareholders sufficient to be exempted from the security requirement, or amend the complaint to eliminate causes of action based upon state law.

   Thereupon Goldberg filed the Amended Verified Complaint (Amended Complaint), containing essentially the same allegations but omitting any reference to a state law claim. Nevertheless, the amended complaint avers that "Plaintiff believes, without limitation, that the Court may find §10(b) of the Exchange Act and of Rule 10b-5 ... applicable to the facts which plaintiff will prove." (¶25, Amended Complaint) (emphasis supplied) This unusual pleading strongly suggests that Goldberg still intends to leave open the possibility of recovering under state law.

2. In the alternative they seek to require Goldberg to post security for expenses and costs. Since, as explained in Note 1, supra, we agree with the defendants that state law claims are implicit in the amended complaint despite the absence of direct reference to them, we would be inclined to grant the motion for security absent an express waiver of intent to recover on common law causes of action. Our disposition of the motion to dismiss, however, makes such a ruling unnecessary.

3. Schlick v. Penn-Dixie Cement Corp., 507 F.2d 374 (2d Cir. 1974), cert. denied, 421 U.S. 976 (1975), is not to the contrary. It is, of course, true, as reiterated in Schlick, that a 10b-5 complaint is not deficient merely because it alleges malfeasance which would also be grounds for suit under state law. 507 F.2d at 379-80. All of the cases cited in this portion of the Schlick opinion, however, involved an element of deception, as did Schlick itself.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.,

Plaintiff,

-against-

YAACOV MERIDOR, et al.,

Defendants,

-and-

UNIVERSAL GAS & OIL COMPANY, INC.,

Nominal Defendant.
----------X

76 Civ. 555

CORRECTING MEMORANDUM

LASKER, D.J.

In my Opinion dated February 10, 1977, an additional footnote is being added. The number "4/" is to be added after the word "granted" at the top of Page 11 and the following footnote is to be added to Page i. of the FOOTNOTES.

> "4. Since this Memorandum was filed the Supreme Court reversed Green, squarely holding that deception is an indispensable element to a 10b-5 claim. Sante Fe Industries, Inc. v. Green, ___ U.S. ___, 45 U.S.L.W. 4317, March 23, 1977. Although the decision renders the above analysis moot, it lends substantial support to the end result."

Dated: New York, New York
March 28, 1977.

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

DAVID GOLDBERG suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC.,

Plaintiff,

-against-

YAACOV MERIDOR, MILA BRENER, DAVID MERIDOR, S. ERELL, GIDEON BEN AARON, ARA A. CAMBERE, H. STRUVE HENSEL, HAIM RAFAELI, MARTIN SIEM, JACOB SUTTON, HENRY A. SINGER, MARITIMECOR, S.A., MARITIME FRUIT CARRIERS COMPANY, LTD., HORNBLOWER & WEEKS, HEMPHILL NOYES, INC., LAVENTHOL & HORWATH a/k/a LAVENTHOL KREKSTEIN, HORWATH & HORWATH, DR. JACOBO DAMM, DR. MAX LEBEDKIN, ELIE HOUSMAN, H. L. FEDERMAN, WILLIAM J. FRIEDMAN, MERRIL M. HALPERN, PER HYSING-DAHL, ANDRE MONTELL, FRITZ KONIG, ZEV LEVIN, RAYMOND CALIEZI,

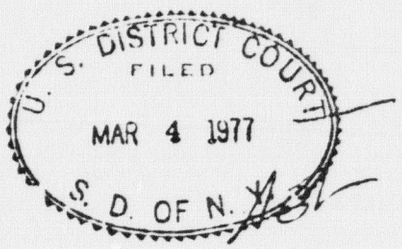
Defendants,

-and-

UNIVERSAL GAS & OIL COMPANY, INC.,

Nominal Defendant.
----------x

76 Civ. 555 (MEL)



JUDGMENT

This cause came on to be heard on certain defendants' motion to dismiss this action because the complaint fails to state a claim against defendants upon which relief can be granted, and the Court having granted said motion on February 10, 1977, it is hereby

ORDERED, ADJUDGED AND DECREED that said motion to dismiss be, and it is hereby, granted, that this action be, and it is

hereby, dismissed as against all defendants with prejudice and without leave to amend the complaint, and that all defendants recover from plaintiff their costs.

Dated: New York, New York
March 1, , 1977

Leonard B. Sand
U.S.D.J.

JUDGMENT ENTERED - 3/4/77
Raymond F. Burghardt
CLERK

A 124

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
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S.D. OF N.Y.

DAVID GOLDBERG, suing derivatively in the right and for the benefit of UNIVERSAL GAS & OIL COMPANY, INC., Plaintiff, -against- YAACOV MERIDOR, et al., Defendants, -and- UNIVERSAL GAS & OIL COMPANY, INC., Nominal Defendant.	76 Civ. 555 (MEL) NOTICE OF APPEAL

Notice is hereby given that David Goldberg, suing derivatively in the right and for the benefit of Universal Gas & Oil Company, Inc., plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment dismissing the amended verified complaint entered in this action on the 4th day of March, 1977.

March 22, 1977.

TURCHIN & TOPPER

/s/

A Member of the Firm
Attorneys for Plaintiff
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TO:
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[continued]

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